

# **EXHIBIT 10**

DRAFT/NOT CERTIFIED  
Telephone Conference

December 1, 2006  
10:30 AM  
40 Gleneida Avenue  
Putnam County Office  
Building  
Carmel, New York

BEFORE: HON. ANDREW P. O'ROURKE  
Presiding Supreme Court Justice

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

\_\_\_\_\_  
ANNE BRYANT

Plaintiff

- versus - Index No.  
5192/00

BROADCAST MUSIC, INC., (a/k/a "BMI"),  
FORD KINDER, KINDER & CO., LTD., VADIVOX, INC.,  
JULES M. "JOE" BACAL; GRIFFIN BACAL, INC.,  
STARWILD MUSIC BMI, WILDSTAR MUSIC ASCAP,  
SUNBOW PRODUCTIONS, INC.,

Defendants

\_\_\_\_\_  
ANNE BRYANT

Plaintiff

Index No.  
2821/02

- versus -

SUNBOW PRODUCTIONS, INC.,

Defendant

\_\_\_\_\_  
Laurie Hardisty, RMR  
Official Court Reporter  
44 Gleneida Avenue, Carmel, NY 10512  
(845) 225-3641 Ext. 294

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: PATRICK J. MONAGHAN, JR., ESQ.,  2 Monaghan, Monaghan, Lamb &amp;  3 Marchisio, Esqs.  4 Attorneys for Plaintiff  5 GLORIA C. PHARES, ESQ.,  6 Patterson, Belknap, Webb &amp; Tyler, Esqs.  7 Attorneys for Defendant Sunbow  8 JUDITH SAFFER, ESQ.,  9 Co-counsel BMI Legal Department  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">Page 4</p> <p>1 First, I want you to know that the  2 arrangements in Putnam County are not quite as  3 imposing as Rockland and much more humble, and there's  4 been a request by somebody's office that we have  5 certain electronic equipment. I doubt very much that  6 this courthouse has it. We're building a new  7 courthouse next door, but it won't be ready until next  8 year, and this case, I hope to God, is not still going  9 on then.  10 MS. PHARES: I think it was our office that  11 inquired, and we -- we understand what's available,  12 and if we do need something, we'll provide it.  13 THE COURT: Well, as far as I know, we have a  14 wall.  15 MS. PHARES: That's fine.  16 THE COURT: Okay. That should do it.  17 Now, I want you to know that in several Court  18 Orders, and I believe in the letter I sent you all,  19 too, that -- that I asked not only for the witnesses,  20 but I asked for a short statement about what they  21 intended to tell us and also the time that would be  22 required. And I don't think I've gotten that from  23 anybody.  24 MS. SAFFER: Yes, you did, Your Honor.  25 Please forgive me. You got it from me, and you also</p>
<p style="text-align: right;">Page 3</p> <p>1 IN CHAMBERS:  2  3 THE COURT: The conference is going to begin.  4 We're going on the record. We have a Court  5 Stenographer.  6 Please place your appearances on the record.  7 MR. MONAGHAN: Yes, Good Morning, Your Honor.  8 Pat Monaghan for the Plaintiff.  9 THE COURT: All right. Who else do we have?  10 MS. SAFFER: Judith Saffer. Judith Saffer  11 for BMI.  12 MS. TATE: It's Ms. Tate. I have Ms. Phares'  13 number to be reached at. Apparently she was at a  14 different number. It's 212-336-2786.  15 THE COURT: Okay.  16  17 (Off the record discussion.)  18  19 (Gloria Phares connected to tele-conference.)  20  21 THE COURT: As I told everyone else, Ms.  22 Phares, this telephone conversation is being recorded.  23 I have a Court Stenographer here.  24 There are some things that I want to get  25 across to you before we get together on Monday.</p>	<p style="text-align: right;">Page 5</p> <p>1 got from me a letter saying we'd like to know it from  2 everybody else.  3 MS. PHARES: Your Honor, actually, I thought  4 we had sent a revised one with that information, but  5 we'll do that right after the call.  6 THE COURT: Okay. Well, you might have.  7 MS. PHARES: Then if you need the information  8 for purposes of planning right now, we can provide it.  9 THE COURT: No, if you haven't sent it to  10 me, please do it by the end of the day so that I can  11 get some kind of feel for what we're going to do next  12 week.  13 MR. MONAGHAN: Okay.  14 MS. SAFFER: Your Honor, if I may?  15 The reason that I wrote to you and pointed it  16 out was that in ... Sorry. Forgive me, forgive me; I  17 don't have the date. But you indicated that the trial  18 would occur next week and that you had set aside one  19 week for the trial. BMI has one witness, the  20 Plaintiff has listed 25 or 26 witnesses, and Sunbow  21 has listed, I believe, seven witnesses, and, at this  22 juncture, I'd like some help determining how we're  23 getting that all done in one week.  24 MR. MONAGHAN: We're revising our list,  25 lopping off about 16 witnesses.</p>

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1 THE COURT: Well, good, because, you know, I  
2 think I've stated this several times, but let me try  
3 it again. This is the juncture that we're at. I  
4 believe at this point that Sunbow -- excuse me -- has  
5 proven to the Court's satisfaction that there were  
6 written contracts that were the only way they entered  
7 into agreements with artists.

8 Now, Ms. Bryant's position is that there were  
9 also -- excuse me -- unwritten agreements, and I  
10 believe that it's up to her to prove that, and we  
11 should be going along that route.

12 MR. MONAGHAN: We understand that route  
13 perfectly, Judge.

14 THE COURT: Okay.

15 MR. MONAGHAN: The issue with the oral  
16 agreement is for the composition for which there is no  
17 written agreement in order to --

18 THE COURT: No, but hold on, hold on. When  
19 you say there's no written agreement, the -- shouldn't  
20 I take the position, or the court take the position,  
21 that because there is no written agreement presently  
22 before us, why shouldn't I say, well, this is just  
23 like the rest of them; there was a written agreement  
24 somewhere along the line and followed the same general  
25 pattern?

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1 MR. MONAGHAN: You should.

2 MS. PHARES: Your Honor?

3 MR. MONAGHAN: We welcome that.

4 MS. PHARES: Your Honor, I think --

5 MR. MONAGHAN: We still need -- I believe,  
6 Your Honor -- if I may -- you still need some  
7 foundation that the same written agreement that covers  
8 Composition X, in this case the Jem Agreement, applies  
9 to the other compositions at issue. You still need a  
10 foundation, I believe, on the record for that.

11 MS. PHARES: Your Honor, I think the  
12 confusion that is going on here, Ms. Bryant wrote  
13 materials for GBI, and she wrote materials for Sunbow,  
14 and in some cases the music is similarly related, and  
15 Mr. Monaghan is trying to open this case to looking at  
16 the agreement with GBI as thinking that they have  
17 something to do with the agreements with Sunbow  
18 because the compositions are related.

19 Our position is that the only thing before  
20 this court is Ms. Bryant's relations with the  
21 Defendants Sunbow and BMI.

22 THE COURT: Well, I tend to agree with you.  
23 As a matter of fact, I -- Ms. Phares, you wrote in one  
24 of the letters, I think going back to mid-November,  
25 that it's your position that you want the Plaintiff

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1 excluded, except with -- with evidence -- except that  
2 evidence that shows an agreement between Sunbow and  
3 and Bryant, and, to me, nobody else is in this case,  
4 with the exception of Bryant and Sunbow. The --

5 MR. MONAGHAN: We don't have a problem with  
6 that because the relationship is with Sunbow as to all  
7 the compositions.

8 THE COURT: Okay. I just want you to know  
9 where I believe we're going.

10 Now, if that's where we are going, then we  
11 shouldn't need an awful lot of witnesses.

12 MR. MONAGHAN: As I say, Judge, we knocked  
13 off about 17 witnesses because we think they're  
14 damages witnesses.

15 THE COURT: All right. So, I would take  
16 witnesses -- I would take witnesses that know anything  
17 about a so-called unwritten agreement or lost  
18 agreement. I would take at least one witness that is  
19 an expert in the -- this general area.

20 I notice, Mr. Monaghan, that you had two  
21 witnesses that were experts, and, so, I hope that you  
22 can get that down to one.

23 Hello?

24 MR. MONAGHAN: Yes, Judge. I don't know what  
25 that noise --

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1 THE COURT: It's probably the FBI. Don't  
2 worry about it.

3 But, so, let's try and keep the number down.

4 Now, when I said the whole week would be  
5 devoted to this case, it certainly was my hope that we  
6 could finish this up to get to the point where the  
7 Plaintiff is going to rest, and, at that point, as I  
8 pointed out in some decision or another, that's the  
9 point where I will accept a motion from the Defendant  
10 Sunbow to dismiss, and I'll look and see where we're  
11 at.

12 MR. MONAGHAN: Okay.

13 THE COURT: All right?

14 Now, the next thing is: Why do we still have  
15 BMI in this case? Didn't that end of it get settled  
16 and the -- the catalog, composition catalog, get  
17 secured away?

18 MR. MONAGHAN: No, it didn't, Your Honor.  
19 Well, there's two parts to the BMI story. One part is  
20 the settlement with Bacal and Kinder, which  
21 accomplished changes in the registration. That is  
22 still an ongoing process. That hasn't occurred yet  
23 completely.

24 MS. SAFFER: Excuse me. I'd like to be able  
25 to comment on just that portion.

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1 The changes for Kinder were done when we got  
2 a letter from Mr. Kinder at his deposition this  
3 summer. They were immediately made. Mr. Bacal's  
4 settlement with Anne Bryant indicated and it was  
5 provided to us by Pat, that Bacal would give whatever  
6 was needed in order to accomplish that. We have asked  
7 Pat repeatedly, get a letter from Mr. Bacal telling us  
8 to change our records and we'll do it. Nothing has  
9 come.

10 MR. MONAGHAN: Well, Bacal is no longer  
11 represented by the firm. Mr. Tannenbaum (sic), we've  
12 been notified that they would not accept a subpoena  
13 for him. And I see that Gloria has served a subpoena  
14 or is about to.

15 As far as getting a letter from him, as I  
16 pointed out when this was first broached, that could  
17 be a very difficult proposition, and it's our position  
18 that the settlement tells him what to do, Number 1.

19 Number 2, we don't believe that, even as to  
20 the Kinder settlement, that BMI has yet completed the  
21 proper corrections to the registration. But that's  
22 only half the BMI case. The other part of the case,  
23 Judge, is the other several hundred thousand dollars  
24 that Ms. Bryant lost from the royalties that were  
25 lost. We have a claim in our Complaint against BMI

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1 for breach of duty, breach of fiduciary duty. When  
2 you hear the evidence, especially Kinder's testimony,  
3 and you look at the BMI contract, you will conclude  
4 that they have an obligation to make sure and protect  
5 their writers.

6 THE COURT: Hold on. Isn't it a fact that if  
7 payments were made by BMI to Kinder or anybody else,  
8 because they had the wrong information, that it's up  
9 to Ms. Bryant to get it back from whoever got the  
10 payments?

11 MR. MONAGHAN: No, that's -- well, it's --  
12 it's possible she can pursue that, but the -- BMI also  
13 had an independent obligation itself to its own  
14 writers. There's no -- when someone -- we have the  
15 contract, actually, right -- right here. I  
16 anticipated this being the question. And the contract  
17 has provisions in it.

18 One, why would someone be a member of either  
19 of those performing rights societies if it doesn't  
20 confer any -- any protection upon them?

21 MS. SAFFER: Your Honor, that's --

22 THE COURT: But --

23 MR. MONAGHAN: That's an issue I think you're  
24 going to have to hear testimony on. And I think as  
25 far as BMI, I ask you to reserve until you hear the

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1 evidence.

2 THE COURT: Okay.

3 MS. SAFFER: Your Honor, if I may?

4 THE COURT: Yes; go ahead.

5 MS. SAFFER: And we vehemently dispute Pat's  
6 interpretation of the BMI contract. But even if,  
7 assuming arguendo, he was correct, Mr. Bacal and Mr.  
8 Kinder were also BMI writers. Why should we have, if  
9 you will, tout that Anne's claim was any more valid  
10 than their claims were?

11 We have done everything. We are not poaching  
12 any royalties. We have paid out all the royalties.  
13 Even if we make a change to Mr. Bacal's interest, if  
14 you will, without getting the letter, we are talking  
15 literally hundreds of dollars, not hundreds of  
16 thousands of dollars; hundreds of dollars. That's it.

17 MR. MONAGHAN: Well, I don't understand,  
18 then, why the contract, the BMI contract Anne signed  
19 with BMI in '71, says that you have the right to  
20 withhold monies if there's a problem with the  
21 registration. These are registrations that were  
22 originally in her name, in some cases for a hundred  
23 percent, that were reduced without her consent,  
24 without her approval, without even notice to her.

25 THE COURT: All right. I don't want to get

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1 too far into --

2 MR. MONAGHAN: That's the idea of the case,  
3 Judge, and I'd ask you to hear the evidence.

4 THE COURT: All right. I'll hear some  
5 evidence on it, but let's get back to this fact that  
6 BMI needs this letter.

7 MR. MONAGHAN: I welcome any suggestions on  
8 how I can squeeze it out of Bacal.

9 MS. SAFFER: Well, you entered into a  
10 settlement agreement with him in which he said that he  
11 would give it to you, so it seems to me that that's  
12 only between you and Mr. Bacal, and if Mr. Bacal is  
13 now represented by a different lawyer, you should give  
14 us a different lawyer. It's your arrangement with him  
15 that's the issue --

16 THE COURT: Pat? Hold on --

17 MS. SAFFER: -- on payment.

18 THE COURT: -- hold on.

19 How about a Court Order based on the fact  
20 that Kinder is -- is nominally still a party to this  
21 case? At least he's in your caption.

22 MR. MONAGHAN: No.

23 MS. PHARES: He's already settled, Your  
24 Honor.

25 MR. MONAGHAN: Bacal and Kinder are out, but

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1 a Court Order inspecting the settlement vis-a-vis  
2 Bacal is a very good idea.

3 MS. SAFFER: Your Honor, I'm prepared  
4 unilaterally to say that we will, when I get off this  
5 phone call, make the changes for Bacal, and to the  
6 extent that Mr. Bacal, in the past year, received a  
7 hundred dollars that Anne claims that she's entitled  
8 to, I would be happy to write my personal check, if  
9 this will get rid of this problem.

10 MR. MONAGHAN: That's not necessary. It's in  
11 the holiday season. We're not looking for your  
12 personal check.

13 THE COURT: You know, I'd put in ten bucks  
14 myself to get rid of the whole case.

15 MS. SAFFER: That will not be a problem, Your  
16 Honor. We will make the changes to Mr. Bacal's  
17 catalog to the extent that Anne claims that she should  
18 be credited with what we're now giving to Mr. Bacal,  
19 and, in the future, that will entitle her to each  
20 distribution to make an additional ten bucks.

21 THE COURT: Now, listen, we've got three very  
22 bright lawyers here. Come up with some language, put  
23 it into a Court Order, I'll sign it, and that ought to  
24 be good enough for BMI --

25 MR. MONAGHAN: Okay.

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1 THE COURT: -- to make whatever changes are  
2 necessary.

3 I've got a copy of the settlement. They were  
4 in the lawsuit; so, put your fertile minds to work  
5 here.

6 MS. SAFFER: Your Honor, if it is --

7 THE COURT: Think about that.

8 MS. SAFFER: If it is -- BMI's records have  
9 to be adjusted, I will volunteer to draft that  
10 document for you this afternoon.

11 THE COURT: Okay.

12 MS. SAFFER: And I will bring it to you  
13 Monday when we recommence the trial.

14 THE COURT: Okay.

15 MR. MONAGHAN: There's one housekeeping  
16 thing, if I may? My wife is having some surgery on  
17 Tuesday morning. I was thinking that perhaps we could  
18 do part of the -- it's important surgery. I was  
19 thinking perhaps we could have -- and I know you set  
20 aside this week, and perhaps we could have the Kinder  
21 deposition, video deposition, which was pursuant to  
22 your Order, played in the morning, and my associate  
23 Michael would cover that part of it. But I'll be  
24 there for the afternoon at least.

25 THE COURT: Well, if you are lead counsel in

1 this, and if you want the morning off to be with your  
2 wife, if she's being operated on, if you ask, I will  
3 certainly give it to you.

4 MR. MONAGHAN: Then I ask for it.

5 THE COURT: Okay; then you've got it.

6 MR. MONAGHAN: Thank you, Judge.

7 THE COURT: I would be very glad -- you know,  
8 your associate there Michael was an intern in my  
9 office.

10 MR. MONAGHAN: Yes, I know that, Judge.

11 THE COURT: We don't hold that against him, I  
12 want you to know.

13 MR. MONAGHAN: No, I understand that.

14 THE COURT: He did a very good job.

15 MR. MONAGHAN: And I understand he never  
16 worked on this case.

17 THE COURT: No, he never had anything to do  
18 with this case.

19 All right. Now, let me get to another area. \_  
20 I got a letter from Mr. Monaghan pointing out that  
21 they had received a check from Sunbow and that should  
22 lead to depositions, I think it was, of Mr. Knapp or  
23 something like that. I also have just received, and I  
24 haven't even read it, just sort of skimmed through it,  
25 a very detailed explanation, I assume, of where that

1 check came from.

2 MS. PHARES: Your Honor, if I can just  
3 describe to you briefly what's happened?

4 THE COURT: Yes.

5 MS. PHARES: Under the agreements with Kinder  
6 and Bryant, they are entitled to certain publishing  
7 rights which Sunbow has conceded all along, just not  
8 the ones she is claiming, and those are managed by  
9 Sony ATV and then sent through to Sunbow and then  
10 divided up among all the people that are -- who appear  
11 on those sheets and then redistributed, and we have  
12 paid these before. Mr. Monaghan has produced copies  
13 of similar kinds of royalty statements as Plaintiff's  
14 Exhibits 17, 18, and 19, and these are simply the  
15 royalties that have been due -- admittedly late, but  
16 that lateness has been cured -- that have been due in  
17 the past for the royalties periods that are indicated  
18 on those statements. And I can't imagine why -- why  
19 Plaintiff, given the burden of what she has to prove  
20 with respect to an oral agreement, thinks that she's  
21 entitled to another witness relating to these royalty  
22 statements, let alone a deposition.

23 THE COURT: Hold on one second.

24 MS. PHARES: And the notion, as I say, that  
25 there's another witness or -- let alone a deposition



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1 of that witness, is a complete detour from the -- the  
2 matter that's before the court, which are these oral  
3 agreements that she contends, you know, in addition to  
4 the -- the written agreements with Sunbow.

5 MR. MONAGHAN: That's really -- I don't want  
6 to fence with Gloria right now, Judge. You've heard  
7 too much of this back and forth; but here it is on the  
8 eve of trial, we get a check. It's not clear to us  
9 exactly why we get this check, although an explanation  
10 has been proffered, but without -- and we're obliged  
11 to accept that explanation without testing somebody?  
12 But I say, a deposition is not unusual for -- and --  
13 and I think Mr. Rigby may be there, am I correct,  
14 Gloria?

15 MS. PHARES: He will be there.

16 MR. MONAGHAN: Okay. Neil Rigby.

17 MS. PHARES: He also --

18 MR. MONAGHAN: Let me just finish with this  
19 point.

20 That if we can perhaps get up there an hour  
21 earlier or something and take Mr. Rigby's deposition  
22 before trial ... I'm not suggesting disrupting the  
23 trial. I want to find out the background of the  
24 checks that just pop up, just by happenstance, on the  
25 eve of each trial.

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1 MS. PHARES: Your Honor?

2 THE COURT: Yes?

3 MS. PHARES: This is really a frolick and a  
4 detour. These are -- when Mr. Monaghan sent you the  
5 material that he did the other day, he neglected, by  
6 the way, to -- to add the following page, which says  
7 that if she has a problem with any of these  
8 statements, she's supposed to make a detailed claim  
9 about them within a year.

10 We certainly have never heard any claims from  
11 Ms. Bryant in the past relating to these, and there is  
12 no basis for rethinking that she has any -- any  
13 additional claims. Most of these have to do with --  
14 not all, but many of them have to do with foreign  
15 royalties. Some of them are domestic ones. There are  
16 ring tones. So, the only thing that Mr. Monaghan  
17 perhaps has a complaint about is that they weren't  
18 paid as timely as he would like, but, frankly, that's  
19 not the topic of this trial and it has never been.

20 And, furthermore, the -- you know, to have  
21 the notion that we're now going to need deposing  
22 witnesses is pretty amazing given that -- that Pat has  
23 had about six or seven experts on his -- on his list,  
24 including Mr. Berman -- Berman whom he did not offer  
25 for a deposition and he is, I gather, still proposing

1 to offer. And I just think this is -- this is  
2 unnecessary.

3 MR. MONAGHAN: But, you know, I didn't issue  
4 the check on eve of trial triggering this curiosity.

5 MS. PHARES: Well, curiosity isn't really  
6 enough to burden Sunbow with --

7 MR. MONAGHAN: But curious as to why we just  
8 got it.

9 THE COURT: Well, I want you to know that I  
10 do not belong to the school of, you know, counter-  
11 spies and curious happenings. What happens happens.

12 I'm not going to -- you're not going to take  
13 any more depositions until we get this week under our  
14 belt, at least.

15 MR. MONAGHAN: Okay.

16 THE COURT: And I don't think then, because I  
17 want to -- to really, as I said in the Order, I want  
18 to give Ms. Bryant her chance to make her case. Then  
19 I want to give Sunbow their chance to get out of this  
20 case, if they can.

21 MR. MONAGHAN: Well, Your Honor, you have  
22 given Sunbow multiple opportunities to get out.  
23 They've filed more motions than Carter has little  
24 liver pills. But let me just say this: The  
25 characterization that the Plaintiff, who did not have

1 any written agreements in her possession for over four  
2 years, the characterization that she's now, although  
3 there is a written agreement that she has accepted --  
4 that's the Jem Agreement. She's accepted that  
5 agreement. She doesn't deny it's her signature. She  
6 doesn't accept some of the other agreements that have  
7 been proffered, but she does accept that one as  
8 genuine. The characterization that -- that now we're  
9 trying to sue on an oral agreement -- remember, before  
10 the Appellate Division came down with its ruling, the  
11 Court did not permit us to amend to include a claim on  
12 the written agreement; however, with the Appellate  
13 Division's ruling and with -- ruling and with the fact  
14 that the Court has ruled, you have ruled that the  
15 written agreement applies, she is bringing her claims  
16 under that written agreement, but she must lay a  
17 foundation that that agreement applies to the other  
18 compositions, which Sunbow's already admitted.

19 MS. PHARES: Hang on, hang on. Wait a  
20 minute. This is an argument that Mr. Monaghan tried  
21 to make several times over the course of the last six  
22 months. This is not what happened. The issue before  
23 the Appellate Division had nothing to do with the  
24 amendment of the Complaint, and Mr. Monaghan moved to  
25 amend the Complaint when we were in the middle of

<p style="text-align: right;">Page 22</p> <p>1 trial. Sunbow's defense to that was that that was too</p> <p>2 late, it was improperly supported, and that we were</p> <p>3 prejudiced. And that was the grounds for excluding</p> <p>4 it, and they are still the grounds for excluding it.</p> <p>5 I'm not finished, Pat; and I respected you</p> <p>6 before.</p> <p>7 THE COURT: Hold on. I denied that, the</p> <p>8 amendment.</p> <p>9 MS. SAFFER: Denied the motion.</p> <p>10 THE COURT: Yes.</p> <p>11 MS. PHARES: And they are not in the case.</p> <p>12 And as part of her motion, Ms. Bryant submitted an</p> <p>13 affidavit sworn to the court that -- that she accepted</p> <p>14 that the agreements governed all of her relations with</p> <p>15 Sunbow, and she submitted that to Justice O'Rourke</p> <p>16 asking him to rely on it when she wanted to amend.</p> <p>17 And we are now going to go back and now have her</p> <p>18 saying, oh, no, it's -- they don't, they don't all</p> <p>19 apply. And, in fact, Justice O'Rourke, when he ruled</p> <p>20 on the framed-issue hearing, found that that same form</p> <p>21 agreement governed all of her relations with Sunbow.</p> <p>22 So, I hear Pat now saying, one, that if there</p> <p>23 isn't an agreement, he's entitled to go into that;</p> <p>24 and, two, he thinks he's entitled to construe these</p> <p>25 agreements. These agreements are not in front of the</p>	<p style="text-align: right;">Page 24</p> <p>1 for ring tones; is that correct?</p> <p>2 MR. MONAGHAN: I believe so.</p> <p>3 THE COURT: Well, wasn't that how this case</p> <p>4 started, with Anne Bryant on the -- the stand playing</p> <p>5 her cell phone for me, which had the transformer music</p> <p>6 on it?</p> <p>7 MR. MONAGHAN: Yes, Your Honor, you're right.</p> <p>8 That was when -- used when -- was the ring tone</p> <p>9 licensed for the company; that that -- actually, you</p> <p>10 know, the telephone company, they had to buy a license</p> <p>11 from somebody.</p> <p>12 MS. SAFFER: Well, for whatever it's worth,</p> <p>13 Your Honor, BMI pays for the performance of ring</p> <p>14 tones, and Anne has received royalties from BMI for</p> <p>15 the performance of her music on ring tones.</p> <p>16 THE COURT: Okay. I'm coming down to the</p> <p>17 last couple issues here.</p> <p>18 I think it was Ms. Phares said, you know,</p> <p>19 what's going to happen.</p> <p>20 When we last left the -- Ms. Bryant was on</p> <p>21 the stand under Cross-examination. Now, I believe</p> <p>22 that that Cross-examination should go forward, and,</p> <p>23 Ms. Phares, you can ask any question you want about</p> <p>24 unwritten agreements whatever. But I'm not going to</p> <p>25 stop now and go back to direct questioning. And</p>
<p style="text-align: right;">Page 23</p> <p>1 Court.</p> <p>2 MR. MONAGHAN: I am of -- that's an</p> <p>3 interesting proposition, Your Honor. Your Honor's</p> <p>4 already found the written agreement applies, but --</p> <p>5 but what I'm hearing from my opponent is it applies</p> <p>6 only as a one-way street; it doesn't apply as to any</p> <p>7 rights that Ms. Bryant might have under the very</p> <p>8 written agreement Sunbow begged you to construe.</p> <p>9 MS. PHARES: And you agreed to it.</p> <p>10 MR. MONAGHAN: Because I didn't have a signed</p> <p>11 copy. How could I embrace a copy where I have no</p> <p>12 signed agreement?</p> <p>13 THE COURT: Ladies and Gentlemen --</p> <p>14 MR. MONAGHAN: Discovery is closed. What</p> <p>15 kind of a lawyer --</p> <p>16 THE COURT: Ladies and Gentleman, please.</p> <p>17 MR. MONAGHAN: -- submits an unsigned</p> <p>18 contract without knowing if his client ever signed it?</p> <p>19 THE COURT: I tell you what: If you two</p> <p>20 don't stop talking over each other and allow me to</p> <p>21 talk, I'm going to hang up on you.</p> <p>22 MR. MONAGHAN: Sorry. I apologize.</p> <p>23 THE COURT: All right. Let's get down -- one</p> <p>24 of the things I think I heard somewhere along the line</p> <p>25 is that in this royalty check, there was some money</p>	<p style="text-align: right;">Page 25</p> <p>1 then -- excuse me -- Mr. Monaghan, you've got</p> <p>2 Redirect.</p> <p>3 MR. MONAGHAN: Yes.</p> <p>4 THE COURT: I'm going to give you a fairly</p> <p>5 wide area on that, but not as wide, probably, as you</p> <p>6 want. And then we've got Recross, and that should</p> <p>7 finish Ms. Bryant's testimony. And my hope is that we</p> <p>8 can finish that on Monday.</p> <p>9 MR. MONAGHAN: Your Honor, I was going to</p> <p>10 suggest ten minutes -- I mean, it's two years ago that</p> <p>11 we stopped the trial. I was going to suggest sort of</p> <p>12 a ten-minute-for-each-side opening, supplemental</p> <p>13 opening, if you will, to say where we are now and in</p> <p>14 light of the -- the developments in the case.</p> <p>15 THE COURT: Well, I'll go along with that.</p> <p>16 MR. MONAGHAN: That will be helpful to you.</p> <p>17 THE COURT: I'll go along with that, but I</p> <p>18 tell you, since you write to me I think once a week,</p> <p>19 both of you -- I can't tell you how many trees we've</p> <p>20 killed with this case -- that I've been sort of</p> <p>21 following it; but, yes, fine, that will be ten-</p> <p>22 minutes a piece, and then we're going to get Anne back</p> <p>23 on the stand.</p> <p>24 MR. MONAGHAN: Okay.</p> <p>25 THE COURT: You're going to continue with</p>



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1 Cross, and then you go into Redirect, etcetera. And  
 2 let's try and finish her up on Monday.  
 3 MR. MONAGHAN: Okay.  
 4 THE COURT: All right? Then, on Tuesday ...  
 5 MR. MONAGHAN: Kinder; and I have the morning  
 6 issue with my wife.  
 7 THE COURT: Yeah; okay. So, we'll get  
 8 together at 2:00 o'clock on Tuesday.  
 9 MS. PHARES: Now, hang on. So, we are not  
 10 going to -- you're saying that your associate is not  
 11 going to do the --  
 12 MR. MONAGHAN: Whatever the Judge's pleasure.  
 13 I am the lead attorney, and the Judge has --  
 14 THE COURT: Well, I'll tell you my problem.  
 15 As bright as Michael is, that, let's supposing we get  
 16 into arguments about questions during the -- during  
 17 the showing of this EBT and I have to make rulings?  
 18 MR. MONAGHAN: Yes.  
 19 THE COURT: I would think that you, as lead  
 20 attorney, want to be there.  
 21 MR. MONAGHAN: I do.  
 22 MS. PHARES: Well, I have a question:  
 23 Aren't you submitting -- you're not submitting the  
 24 whole examination?  
 25 MR. MONAGHAN: I don't know how -- actually,

1 demeanor and judge the credibility of the witness,  
 2 just as you would with a live witness. And that's  
 3 what the Order said. The Order said it's essentially  
 4 a trial witness. That's why we spent all the money to  
 5 go down there and made the motion. So, I think it's  
 6 important that you witness his demeanor and see the  
 7 testimony.  
 8 MS. SAFFER: Well, once again, I go back to a  
 9 very practical consideration. I was under the -- at  
 10 least an understanding that we were going to try to  
 11 wrap this thing up in a week. If we take a full day  
 12 on Mr. Kinder, how are you going to get all the other  
 13 witnesses to be heard that everybody wishes to have?  
 14 To be perfectly frank, I've got one witness,  
 15 and my witness, I said to the Judge, I expect I could  
 16 complete in about two hours. So, it's not really  
 17 going to effect my participation so much as I want.  
 18 You know, I sort of do consider myself  
 19 slightly impartial. I would like to think that the  
 20 Judge gets an opportunity to get a total picture from  
 21 everybody's point of view, and, therefore, I wonder  
 22 why we need to spend a full day with Mr. Kinder and  
 23 down in Florida and not -- where he went to elementary  
 24 school --  
 25 THE COURT: Okay; all right. Okay. Let's

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1 the technology doesn't allow for it, doesn't allow for  
 2 anything other than playing the whole darn thing.  
 3 We -- actually, you know, I think the Judge should  
 4 hear the whole thing.  
 5 MS. PHARES: Well, I mean --  
 6 MR. MONAGHAN: We took a lot of money to go  
 7 to Florida. We took a lot of money on the Reporter.  
 8 I think he's a critical third-party witness and sheds  
 9 a lot of light on the relationship also with BMI as  
 10 well. So, I think he's a very important witness.  
 11 MS. PHARES: Well, wait a minute. But we  
 12 only have a narrow issue. The deposition is all over  
 13 the place, and what you're proposing now is that we  
 14 take all the time from -- that we spent on that  
 15 deposition in court again, instead of you selecting  
 16 the selections that you want.  
 17 THE COURT: How long is the deposition?  
 18 MR. MONAGHAN: Well, it was a videotaped  
 19 deposition.  
 20 MS. PHARES: It was about three or four  
 21 hours, Your Honor, five.  
 22 MR. MONAGHAN: That's correct; but you  
 23 still -- Your Honor, this is -- this is a trial  
 24 witness now. This is not a deposition. This is a  
 25 trial witness, and we think it's important you see his

1 back up here.  
 2 Mr. Monaghan, what you want to do is see if  
 3 you can get a, you know -- you can run this through  
 4 and -- a machine and find out, you know, how many feet  
 5 are involved, and maybe you can bring it up to the  
 6 point where you want that testimony, you don't want  
 7 the other stuff.  
 8 MR. MONAGHAN: Okay.  
 9 THE COURT: I'm going to ask you to do that.  
 10 MR. MONAGHAN: Will do.  
 11 THE COURT: Because one way or another,  
 12 you've only got three hours on Tuesday afternoon to do  
 13 this whole witness; so, try and get it done by the end  
 14 of three hours. All right?  
 15 MR. MONAGHAN: All right.  
 16 MS. PHARES: And if you're going to designate  
 17 testimony, as I assume you are, would you just let us  
 18 know the lines and so forth in the transcript so that  
 19 we can prepare with any cross designation that we  
 20 need?  
 21 THE COURT: I think that's fair.  
 22 MR. MONAGHAN: All right.  
 23 THE COURT: Okay. So, all right, that I  
 24 think takes care of all of the housekeeping issues  
 25 that we have, and if there's something any of the

<p style="text-align: right;">Page 30</p> <p>1 parties want to put on the record, do it now.</p> <p>2 MS. SAFFER: I would like to ask, since Mr.</p> <p>3 Monaghan has indicated that he's removed 16 witnesses,</p> <p>4 if he could tell us who he still intends to call so</p> <p>5 that we can prepare only for what's relevant.</p> <p>6 MR. MONAGHAN: We both indicated, Gloria and</p> <p>7 I, that we're going to submit revised witness lists.</p> <p>8 THE COURT: All right.</p> <p>9 MS. PHARES: As early in the day as possible,</p> <p>10 okay, because we are all preparing, and this has a</p> <p>11 huge impact on everyone's preparation.</p> <p>12 MR. MONAGHAN: Of course.</p> <p>13 Also, Judge, yesterday I raised the</p> <p>14 possibility of trying to simplify this with some</p> <p>15 stipulations, some stipulated facts. I don't know why</p> <p>16 this idea just occurred to me, but ... By simplifying</p> <p>17 that -- both Gloria and Judy have said that they were</p> <p>18 amendable to it, but crafting it over night, I tried</p> <p>19 to do that, but I just couldn't put it together.</p> <p>20 THE COURT: Well, look I'd certainly be in</p> <p>21 favor of it. I would say continue working on it.</p> <p>22 Maybe the three sides could come up with the points</p> <p>23 that they're willing to concede, and when you get here</p> <p>24 on Monday morning, you could sit down and we could put</p> <p>25 it on the record.</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. MONAGHAN: All right. Thank you, Judge.</p> <p>2 THE COURT: All right. Have a good weekend</p> <p>3 all.</p> <p>4 MS. PHARES: It's -- Your Honor?</p> <p>5 THE COURT: And don't send me any more mail</p> <p>6 until Monday.</p> <p>7 MR. MONAGHAN: Monday is fair game?</p> <p>8 THE COURT: No. Goodbye.</p> <p>9</p> <p>10 (Whereupon the proceeding concluded.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 31</p> <p>1 MR. MONAGHAN: That would be great.</p> <p>2 MS. SAFFER: Well, Your Honor, I think I made</p> <p>3 a substantial contribution. I conceded that we'll</p> <p>4 change our claim for Mr. Bacal. Does that count for</p> <p>5 anything?</p> <p>6 THE COURT: I'm sure you did.</p> <p>7 All right. I wish you all a nice weekend.</p> <p>8 It sounds like it's going to be a busy one.</p> <p>9 MR. MONAGHAN: Yes.</p> <p>10 THE COURT: But --</p> <p>11 MR. MONAGHAN: Well, Judge Judge?</p> <p>12 THE COURT: Yes?</p> <p>13 MR. MONAGHAN: You're starting at what time,</p> <p>14 then, on Monday?</p> <p>15 THE COURT: All right. 10:00 o'clock. I</p> <p>16 have a regular calendar every morning, as you may</p> <p>17 remember from Rockland County, and while I can get my</p> <p>18 Principal Law Clerk to take a lot of them, some of</p> <p>19 them I have to handle myself. And, so, 10:00 o'clock</p> <p>20 we'll start and go through until lunch every day,</p> <p>21 which is an hour-and-a-quarter, or something like</p> <p>22 that, and around 12:30 or 12:00, and we'll wrap up --</p> <p>23 we have to be out of this building by 5:00 o'clock at</p> <p>24 night, I want you to know, but you can leave things</p> <p>25 here over night, you know, and at lunch time.</p>	

# EXHIBIT 11

(DAILY COPY)  
Continuing Bench Trial  
(Day 3)

December 4, 2006  
10:10 AM  
40 Gleneida Avenue  
Putnam County Office  
Building  
Carmel, New York

BEFORE: HON. ANDREW P. O'ROURKE  
Presiding Supreme Court Justice

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

X

ANNE BRYANT

Plaintiff

- versus -

Index No.  
5192/00

BROADCAST MUSIC, INC., (a/k/a "BMI"),  
FORD KINDER, KINDER & CO., LTD., VADIVOX, INC.,  
JULES M. "JOE" BACAL; GRIFFIN BACAL, INC.,  
STARWILD MUSIC BMI, WILDSTAR MUSIC ASCAP,  
SUNBOW PRODUCTIONS, INC.,

Defendants

X

ANNE BRYANT

Plaintiff

- versus -

Index No.  
2821/02

SUNBOW PRODUCTIONS, INC.,

Defendant

Laurie Hardisty, RMR  
Official Court Reporter  
44 Gleneida Avenue, Carmel, NY 10512  
(845) 225-3641 Ext. 294

Page 2

1 APPEARANCES: PATRICK J. MONAGHAN, JR., ESQ.,  
 2 and MICHAEL KORIK, ESQ., Co-counsel  
 3 Monaghan, Monaghan, Lamb &  
 4 Marchisio, Esqs.  
 5 Attorneys for Plaintiff  
 6  
 7 GLORIA C. PHARES, ESQ.,  
 8 and JOHN C. KNAPP, ESQ., Co-counsel  
 9 Patterson, Belknap, Webb & Tyler, Esqs.  
 10 Attorneys for Defendant Sunbow  
 11  
 12 JUDITH SAFFER, ESQ.,  
 13 and JOHN COLETTA, ESQ.,  
 14 Co-counsel BMI Legal Department  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 3

1 THE COURT: All right, Ladies and Gentlemen.  
 2 In talking to the attorneys the other day, I had said  
 3 that I would give a few minutes to enable each side --  
 4 all sides to refresh themselves and the Court where they  
 5 are and what they think we're doing here.  
 6 So, go ahead, Mr. Monaghan.  
 7 MR. MONAGHAN: Thank you, Your Honor.  
 8 Your Honor, this will involve some projection on the  
 9 board, but I promise I won't take longer than ten  
 10 minutes.  
 11 THE COURT: All right.  
 12 MR. MONAGHAN: After six years of litigation,  
 13 four appeals, one removal to federal court, and a  
 14 trial which was interrupted in 2004, the question of  
 15 the day is where are we now, where are we going, and  
 16 where are we with the evidence that's come in so far?  
 17 And, Your Honor, I clerked a case when I was  
 18 going to law school and there was a partner there  
 19 named Kiernan, and the word about Tom Kiernan was his  
 20 ability to simplify matters was his greatest talent.  
 21 He was the senior litigating partner.  
 22 This case has had a lot of complex issues  
 23 thrown at you, but it really boils down to a fairly  
 24 simple proposition. There's no question that Anne  
 25 Bryant composed the compositions that are at issue.

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1 There's no question that there was an agreement by  
 2 which she turned over the copyrights to Sunbow to  
 3 exploit them for their mutual behalf, and the question  
 4 that you're going to have to answer and deal with  
 5 based on the evidence is what rights did she retain  
 6 when she turned over the copyrights.  
 7 The Defendant Sunbow has attempted to  
 8 distract the Court, I believe, by suggesting that  
 9 merely because it's a work-for-hire that we're dealing  
 10 with that the Plaintiff somehow signed away all her  
 11 rights. They then begged you, in 2004, to look at a  
 12 Jem agreement, which, at that point in time, was  
 13 unsigned, and they said repeatedly throughout their  
 14 pleadings, the Jem agreement is the Bible; the Jem  
 15 agreement is the agreement that governed all the  
 16 relationships.  
 17 There then was the issue of whether or not  
 18 some of the agreements which were tendered with the  
 19 Jem agreement in the middle of trial were legitimate.  
 20 The agreement, the Jem agreement, dated June 1, 1985,  
 21 does contain Ms. Bryant's signature, is not  
 22 challenged, and we submit does govern the relationship  
 23 between the parties, all the relationships, all the  
 24 compositions.  
 25 So, what's the beef? Why are we here?

Page 5

1 Let's start with BMI.  
 2 MS. PHARES: Your Honor, where you can see,  
 3 I'm afraid we can't.  
 4 THE COURT: If you need to move around ...  
 5 The accommodations are not spacious here. We're  
 6 hoping for the new courthouse, though I hope this case  
 7 is over by the time the new courthouse gets here. So,  
 8 just moved around at your -- where you can see best.  
 9 MS. PHARES: If you don't mind, I'm just  
 10 going to go stand over here.  
 11 THE COURT: You can take the witness chair if  
 12 you want.  
 13 MS. PHARES: All right.  
 14 THE COURT: It won't hurt. Most lawyers  
 15 doesn't like to be witnesses.  
 16 Go ahead.  
 17 MR. MONAGHAN: In the course of the  
 18 litigation, in various pleadings before you, Judge, on  
 19 the many, many motions we've had to deal with, Sunbow  
 20 has made some damaging admissions. They're damaging  
 21 because they acknowledge, and we're going to bring  
 22 some of them up on the screen, and they're  
 23 evidentiary. These are not just pleadings or motions.  
 24 When they made informal judicial proceedings they  
 25 become formally judicially binding.



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1 And what are those admissions?  
 2 Now, what we're looking at is the face page  
 3 of the appendix, and this is merely for convenience of  
 4 reference. I have the volumes here.

5 What has Sunbow already told the Court? It's  
 6 told the Court that Ms. Bryant is entitled to her  
 7 performance royalties. No problem. Ms. Phares  
 8 stipulated to that the last time we were on.

9 THE COURT: Go ahead.

10 MR. MONAGHAN: It's told the Court she's also  
 11 entitled to certain additional publishing royalties.

12 Where is the fight?

13 They don't agree with the type of rights to  
 14 which -- to which we claim entitled. We got a check,  
 15 which I brought to Your Honor's attention. We got a  
 16 check just a few days ago, as we did before the 2004  
 17 trial, for publishing royalties, music royalties.

18 Now, Michael can you bring up, please, the  
 19 first appendix reference?

20 Fortunately I did leave one of the folders in  
 21 the cart, despite this morass of stuff.

22 In Sunbow's papers, which were submitted to  
 23 Your Honor, this was -- this is a portion of the  
 24 affidavit from Carole Weitzman submitted on -- in  
 25 connection with their motion for summary judgment.

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1 And ...

2  
 3 (Off the record discussion between  
 4 Mr. Monaghan and Mr. Korik.)

5  
 6 MR. MONAGHAN: I submit, Your Honor,  
 7 throughout the pleadings before the Court down below,  
 8 there are at least a half a dozen places where Sunbow  
 9 acknowledges, yes, she's entitled to her performance  
 10 royalties, but she's also entitled to publishing  
 11 royalties.

12 Well, what does that do to the proposition,  
 13 Your Honor, that she should be out of court? What  
 14 does that admission do to the notion that we just  
 15 found this agreement, which is dispositive, and you  
 16 have nothing left? It destroys it. We're here  
 17 because we haven't gotten a proper accounting of the  
 18 royalties to which Ms. Bryant is entitled. The two  
 19 checks that just -- the check that just came, came  
 20 with a small bare-bones accounting, under the Jem  
 21 agreement, the Jem agreement requires that there be an  
 22 accounting for these royalties.

23 So, what's the fight with Sunbow? The fight  
 24 is we haven't gotten accountings for years for the  
 25 royalties, and the major fight, the major fight is

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1 that she's entitled, Ms. Bryant, to mechanical  
 2 royalties.

3 And what would the Court define mechanical  
 4 royalties as? We say, and all of the experts say, and  
 5 Sunbow's own contract say, an audio visual work, which  
 6 would be the classic definition, includes records with  
 7 sound and visual or sound only. That's defined in  
 8 their agreements.

9 In evidence already before Your Honor are a  
 10 number of the compositions, the transformers showing  
 11 you VHSs, DVDs, and various other iterations for which  
 12 Ms. Bryant receives nothing. They use her music, she  
 13 receives nothing. This accounting that she just  
 14 received, which will go into evidence, did not mention  
 15 any of these other uses. Right now, as I'm standing  
 16 before you, her music is being used all over the  
 17 world. It's being used on the Cartoon Network, and  
 18 this is already in evidence. I'm only repeating  
 19 what's been testified to. There is a movie coming out  
 20 next year, Steven Spielberg, Live Action Transformers  
 21 Movie. The music in that movie is Ms. Bryant's music.  
 22 If you go to the trailers now, you will hear  
 23 transformers more than meets the eye. The classic  
 24 song. That is her song. She neither gets credit for  
 25 it, nor any money for it.

Page 9

1 Now, we have the agreement. We have the Jem  
 2 agreement that they begged you to apply. At least 6  
 3 or 7 times in their papers before you they said the  
 4 Jem agreement is dispositive, the Jem agreement  
 5 controls. We agree. And they also told you something  
 6 else. They said it doesn't just apply to Jem, it  
 7 applies to all of the compositions and all of the  
 8 series, all of the Sunbow series. Okay? So, it  
 9 applies to all of the compositions at issue in the  
 10 case, including transformers.

11 Now, Ms. Phares has been want to say that's  
 12 not in the case. It's not in the case. They're not a  
 13 Defendant Griffen Bacal is not a Defendant. We don't  
 14 care because it's a Sunbow production. The names on  
 15 all of those transformers products, it's not Griffen  
 16 Bacal, it's Sunbow. You will hear evidence, you will  
 17 hear additional testimony from other witnesses, that  
 18 if Sunbow and GBI were the same, Ms. Weitzman  
 19 testified, and we will put it in evidence, that the  
 20 music was just handed over, handed over to Sunbow for  
 21 use. The transformers music was the subject of that  
 22 inquiry at her deposition.

23 So, we're here. We're fighting about the  
 24 royalties to which she's entitled. She has a  
 25 contract. The contract does apply to all the

Page 10

1 relationships. The contract is in the case. It  
2 was -- they besieged you to put it in the case. So be  
3 it. It's binding upon them. And the admissions in  
4 the papers are binding.

5 We'll give you a formal request to take  
6 judicial notice of the admissions that were made by  
7 Sunbow.

8 Now, what's our beef with -- with BMI? Okay.  
9 The BMI contract is Exhibit 1 in evidence. That  
10 contract provides -- it's an old contract. I think  
11 Ms. Bryant was just 21, perhaps.

12 MS. BRYANT: My 21st birthday.

13 MR. MONAGHAN: 21 at the time it was signed.  
14 A long time ago, a while ago.

15 MS. BRYANT: A while ago.

16 MR. MONAGHAN: And it provides that when the  
17 writer signs up with BMI, a performing rights society,  
18 that BMI is -- seeks and obtains acknowledgments and  
19 guarantees that the composition is original, not  
20 somebody else's work.

21 Ms. Bryant, if you read the contract, you  
22 will come away from that contract with a view that the  
23 obligation to protect the writer, the member of the  
24 society, is inherent in that -- in that contract.

25 You're going to hear testimony from Dr. Kinder, said

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1 the same thing.

2 Now, BMI's position here as well, it's not our  
3 fault that other people come in with cue sheets and  
4 change registrations. They're only two parties  
5 responsible for that process. One is Sunbow, which  
6 sends in the sheets, and the other is BMI, who --  
7 which has the obligation to protect its writers. In  
8 this case it didn't. In fact, the registrations are  
9 still not straightened out, even after two  
10 settlements, hard fought, hard negotiated settlements.  
11 She still only gets something like 8.3% of  
12 transformers, even though by all accounts, all  
13 admissions she's entitled to a hundred percent of the  
14 writer's royalty on transformers. We're still not  
15 where we should be on correcting the riff.

16 So, is it just, well, BMI is a not-for-profit  
17 performing rights society and they shouldn't be held  
18 accountable? No, Your Honor. They're responsible for  
19 \$238,000.00 worth of damages we've already put in the  
20 record as Exhibit 30. Exhibit 30 was a tally that Ms.  
21 Bryant had calculated based on looking at what the  
22 publisher got because. There's a two hundred percent  
23 split on those royalties. The Publisher gets a  
24 hundred percent of the performance royalties; writers  
25 split up the other hundred percent. She was able to

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1 calculate only through the Year 2000 and -- I think it  
2 was 2000, 2001, \$238,000.00 worth of damage. We've  
3 had no discovery for three years. Those damages are  
4 continuing and on-going. Our discovery stopped when  
5 the Note of Issue was filed.

6 So, our beef with BMI is a serious one. They  
7 were supposed to protect their writers. They didn't  
8 protect. They had a fiduciary duty to protect their  
9 writers. They didn't do so. They accepted those cue  
10 sheets without challenge and switched and changed  
11 those registrations, to Ms. Bryant's detriment. So,  
12 BMI is not just an innocent bystander in this case.

13 That's the case. It's a contract case, an  
14 unjust enrichment case against Sunbow. They received  
15 huge royalties using Ms. Bryant's music. They  
16 continue to receive huge royalties with respect to her  
17 music, and the evidence is already in for the most  
18 part on that major subject matter.

19 THE COURT: Well, let me ask you a question  
20 and we talked about this the other day on the  
21 telephone. If Ms. Bryant only got 8% of transformers,  
22 who got the other 92%?

23 MR. MONAGHAN: Joe Bacal got a piece of it  
24 and -- and, oh, Dr. Kinder.

25 THE COURT: Well, now, you settled that with

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1 them.

2 MR. MONAGHAN: We did.

3 THE COURT: So, wouldn't your claim be  
4 against them if they -- for unjust enrichment if they  
5 got the money and your client didn't?

6 MR. MONAGHAN: Our claim is that, as far as  
7 BMI, and they made changes, the source of which we  
8 still don't know how those changes came about, they --  
9 maybe Kinder got the money, but they took the actions  
10 that resulted in Kinder getting the money. Yes, we  
11 have settled with Kinder, but that doesn't make it go  
12 away. That doesn't erase the fact that changes were  
13 made.

14 THE COURT: By the way, under your view of  
15 the case, it's Kinder that was unjustly enriched;  
16 isn't that so?

17 MR. MONAGHAN: Kinder may have been unjustly  
18 enriched, but Sunbow was equally unjustly enriched.  
19 Why? Because they made deals with the various  
20 parties, various producers along the way and gave  
21 away, gave away pieces of her attribution on those  
22 particular compositions. And BMI is responsible not  
23 because it got any money, we're not suggesting that  
24 BMI got any money out of it. What we're suggesting is  
25 they had an obligation to their writers under the



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1 writers agreement. This is why you become a member of  
2 that society in the first place. So, they shouldn't  
3 have allowed those changes without checking with her.

4 Your Honor, they're being very, very zealous  
5 right now. We haven't been able to get those changes  
6 we worked out years ago with the settlements now  
7 because they're being very zealous in protecting. If  
8 they had been half as zealous along the way, we  
9 wouldn't be here.

10 THE COURT: Okay. I don't want to get into  
11 the argument on this.

12 All right. Thank you very much. And maybe  
13 we could move that out of the way so Ms. Bryant could  
14 see what's going on.

15 Oh, you're going to go over there now. All  
16 right.

17 MS. PHARES: Preference of order, Your Honor?

18 THE COURT: I think you're next up.

19 MS. PHARES: Okay. I'll do this from here.

20 THE COURT: Someone else can have the jury  
21 chair if they'd like.

22 MS. PHARES: I don't think we need this any-  
23 more.

24 MR. KORIK: Okay.

25 MS. PHARES: So that I can see the Court.

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1 Good Morning, Your Honor. It is nice to see  
2 you again.

3 Before I begin, I just would like to -- I  
4 have to say that there is a certain Alice-In-Wonder-  
5 land quality about listening to the Plaintiff's  
6 recounting of the beginning of this case. But the  
7 Plaintiff, if you look at the Complaint in this case,  
8 there is no contract claim, and despite the fact that,  
9 from the very beginning of this case, as -- as Mr.  
10 Monaghan points out, we have said that this was a  
11 contract case. And it was only that there was such --  
12 such strenuous objection to the possibility of that  
13 that this case went the way it did. But that was the  
14 choice that was made by the Plaintiff. And it was  
15 only when the -- she was confronted with finally the  
16 signed agreements, and then we had to go through,  
17 it-wasn't-my-signature phase, that we got to where we  
18 are. But we are proceeding and Sunbow is proceeding  
19 right now this week according to the findings that are  
20 laid out in your Court August 10, 2006, letter, in  
21 which you reaffirmed in the November 2nd decision on  
22 Sunbow's CPLR 4401 motion based on admissions. And  
23 according to that letter, and I'm going to now quote,  
24 and this is what we discussed on Friday, the Court has  
25 already found that there were written and valid signed

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1 contracts between Plaintiff and Defendant Sunbow.  
2 Defendant has presented evidence that said written  
3 contracts were the only way Defendant Sunbow operated  
4 with the artists it employed. If Plaintiff intends to  
5 now say there were oral contracts, it is up to her to  
6 prove this, especially in the face of the integration  
7 or merger clauses. That's the end of the quote.

8 Now, Mr. Monaghan and -- and his client made  
9 a motion to amend their Complaint at the end of 2005  
10 in the middle of our trial and Your Honor denied that  
11 motion. So, what Mr. Monaghan is now trying to do is  
12 to just ignore that decision and say, well, no we're  
13 here to construe the agreements.

14 We aren't really here to construe the  
15 agreements. We're here on her claim that she has an  
16 oral agreement, in addition to the agreements that  
17 Your Honor has found bound their relationship.

18 Each of the Sunbow agreements contains a  
19 merger clause stating that the agreement is the entire  
20 agreement of the parties relating to its subject  
21 matter and that it cannot be changed, rescinded, or  
22 terminated orally. Under New York Law that clause is  
23 the evidence of the parties' intent that the agreement  
24 be considered a completely integrated agreement. It  
25 also discharges all prior agreements that are

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1 inconsistent with it or fall within the scope of the  
2 agreement.

3 The Sunbow agreement includes a section  
4 relating to the royalties to which Kinder and Bryant  
5 are entitled from rising from public performance, just  
6 as Mr. Monaghan agreed, and which -- which Sunbow has  
7 said since the beginning of this case. It also has a  
8 section indicating to what publishing royalties  
9 Plaintiff is entitled to. But that's not the subject  
10 of the lawsuit today, even though that's the way Mr.  
11 Monaghan would like to reform it.

12 The Plaintiff has the burden of proving an  
13 oral agreement that she claims entitles her to  
14 royalties from a much broader range of publishing than  
15 it permitted under the Sunbow agreements. Sunbow does  
16 not believe that Plaintiff can carry her burden of  
17 proving the oral agreement that she claims, but even  
18 if it can, if she can show an agreement, it conflicts  
19 and it relates to the subject matter of the written  
20 Sunbow agreements, therefore is barred as a matter of  
21 law under the parole evidence rule.

22 And in connection with that, Your Honor, and  
23 in light of the focus of this trial, as set out in  
24 your August 10 letter, Sunbow is submitting this  
25 morning four motions in limine. And I don't know to

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1 whom we should be giving these to. Do you have a  
2 courtroom clerk to whom you want us to give them or  
3 should we hand them up to you?

4 THE COURT: I'll take them.

5 MS. PHARES: Okay.

6 THE COURT: They really should be filed with  
7 the County Clerk's Office and then they come upstairs  
8 here, but since you have them all ready, let me have  
9 them so I can take a look at them over the time I  
10 have.

11 MS. PHARES: We can also give a set and have  
12 them filed, if that's what you prefer.

13 THE COURT: Yes.

14 MS. PHARES: Okay. How would that be?

15  
16 (Handing to Judge.)  
17

18 MS. PHARES: The first is that the Court --  
19 and we also discussed this on Friday, is that the  
20 Court exclude testimony about agreements with parties  
21 other than Sunbow. I believe that Your Honor endorsed  
22 that idea when we discussed it on Friday.

23 The other three motions in limine relate to  
24 witnesses that the Plaintiff has noticed.

25 Specifically we move to exclude the testimony of Neil

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1 Rigby, who is TV Loonlands Head of Business Affairs,  
2 and Carole Weitzman and David Berman. None of the  
3 three witnesses has any testimony that is relevant to  
4 the oral agreement that Ms. Bryant claims was made in  
5 the early to mid 1980s and which was the principal  
6 focus of the trial this week, and none of the issues  
7 for which their testimony is noticed is relevant to  
8 her alleged oral agreement.

9 In addition, Ms. Weitzman's testimony is  
10 inadmissible under CPLR 3116A because it's being  
11 offered by an unsigned deposition transcript, and  
12 Plaintiff has not shown that it was sent to her and  
13 that she was given a 60 day opportunity to review it.  
14 It's also inadmissible under CPLR 3117A because the  
15 testimony isn't being used for impeachment. She isn't  
16 a party and wasn't a party when the deposition was  
17 taken, nor was she employed by Sunbow at the time of  
18 her deposition, and the Plaintiff has not shown that  
19 Ms. Weitzman is unavailable under any of the standards  
20 set out in CPLR 3117A3.

21 As for Mr. Berman, Plaintiff's expert, Sunbow  
22 moves to exclude his testimony, not only because it  
23 doesn't relate to the principal issue, that is -- that  
24 is whether or not there was an oral agreement on which  
25 he clearly has no evidence, but because he does not

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1 have extensive area -- experience, rather, in the area  
2 of music publishing that is relevant to this case.  
3 I'm not saying that Mr. Berman hasn't had a career in  
4 the sound-recording industry. He has. But he does  
5 not have the experience in the commissioning of music  
6 for television and movie production, and that is  
7 another area of music law than the one he has  
8 practiced in.

9 Finally, both Mr. Berman and Mr. Rigby have  
10 been noticed for issues that relates to an  
11 interpretation of the meaning of certain provisions of  
12 the Sunbow agreements. And, again, as I've said  
13 earlier, these are attempts by the Plaintiff to evade  
14 the Court's ruling when it denied the Plaintiff's  
15 motion to amend her Complaint and to sue on those  
16 agreements. If she had wanted to sue on those  
17 agreements, she should have done that at the outset of  
18 this case, and instead she denied that there were ever  
19 agreements. She has come to this point by her own  
20 choosing.

21 The interpretation of the Sunbow agreements  
22 is not before the Court this week and Sunbow asks Your  
23 Honor to exclude any attempt to introduce testimony  
24 purporting to interpret the agreements.

25 We'll also, just as a matter of record, renew

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1 the motions in limine that we made at the outset of  
2 the trial in 2004. And then one thing I was -- kind  
3 of a matter of housekeeping that I would just like to  
4 confirm is that the exhibits from the framed issue  
5 hearing and the transcript of that hearing are  
6 considered part of our trial.

7 THE COURT: Yes.

8 MS. PHARES: Thank you. We had, I know,  
9 proceeded that way. We marked our exhibits that way,  
10 but I just wanted to make sure that would be the case.

11 And, also, I would like to ask Your Honor,  
12 there are three witnesses who are -- that are on both  
13 -- that are on Sunbow's and Plaintiff's witness list,  
14 and I just ask that when any witness is called, that  
15 they be examined one time for all parties so that we  
16 don't have to have people coming back.

17 THE COURT: Well, that sounds reasonable.

18 Now, has Mr. Monaghan had a chance to review  
19 these motions in limine?

20 MR. MONAGHAN: Just handed to me.

21 THE COURT: All right.

22 MR. MONAGHAN: Your Honor?

23 MS. PHARES: Well, Your Honor, I should  
24 say --

25 MR. MONAGHAN: Let me just put an



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1 objection --

2 MS. PHARES: Excuse me.

3 THE COURT: Hold on. Let me just -- let her  
4 finish.

5 MS. PHARES: We couldn't actually prepare all  
6 these motions because we didn't receive Mr. Monaghan's  
7 witness list until ten minutes past five on Friday  
8 evening when he was -- when -- after you had said that  
9 you were closing up at 4:30. So, we could hardly  
10 really address these issues until after we had  
11 received that list.

12 And then one final thing that I would just  
13 like to make sure is all right with the Court, we  
14 have, in the ensuing two years, managed to lose our  
15 copies of the Plaintiff's exhibits, and on Friday we  
16 were going to -- we were going to -- last Friday,  
17 rather, our paralegal came to copy them, and it turns  
18 out that they were not here in the courthouse because  
19 Mr. Monaghan had taken them with him. So, we would  
20 like the Court's permission to borrow them for the  
21 evening so that we may copy them, and we will bring  
22 them back tomorrow.

23 MR. MONAGHAN: No problem.

24 THE COURT: All right.

25 MS. PHARES: Thank you, Your Honor.

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1 THE COURT: All right. Thank you.

2 MR. MONAGHAN: Your Honor?

3 THE COURT: Before Ms. Saffer -- go ahead,  
4 Mr. Monaghan.

5 MR. MONAGHAN: Your Honor, I think what you  
6 just heard was -- was not so much an opening but  
7 preliminary to an argument and, in fact, most of an  
8 argument that had no place in an opening, Number 1.  
9 Number 2, since it was raised, let me deal  
10 with this idea of oral contract, written contract, and  
11 merger clauses; okay? A contract that has a merger  
12 clause, the merger clause relates only to the subject  
13 matter of that contract, no other contract. A merger  
14 clause dealing with Composition X does not bar any  
15 testimony about Composition Y. There is only one  
16 written agreement that is valid in this case. It is  
17 the Jem agreement.

18 Now, Ms. Phares says, Monaghan, you should  
19 have sued on that agreement. We didn't have that  
20 agreement until Your Honor allowed them into 2004 to  
21 drop it in the middle of the trial, a year after we  
22 had demanded it. So, fair -- fairness and justice  
23 require that the Plaintiff -- and you've already found  
24 valid written contracts that Sunbow besieged you to  
25 apply to the relationship. They are stuck with the

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1 contract.

2 THE COURT: But aren't we getting in now --  
3 what I really wanted to hear from you is, I'm going to  
4 give you a chance to answer the motions in limine.

5 Will you be able to do that by this  
6 afternoon?

7 MR. MONAGHAN: No.

8 THE COURT: Right after lunch or tomorrow,  
9 whenever you appear?

10 MR. MONAGHAN: I will be able to deal with  
11 them by tomorrow.

12 THE COURT: All right.

13 MR. MONAGHAN: As for preliminarily say --

14 THE COURT: No, I don't want to hear any  
15 preliminarily. I want to give you a chance to read  
16 them.

17 MR. MONAGHAN: Okay.

18 THE COURT: Okay. Ms. Saffer, we saved the  
19 best for last. Now you're on.

20 MS. SAFFER: Thank you. That's the nicest  
21 introduction I think I've ever received. Thank you.

22 You know, when we concluded the testimony  
23 back in 2004, I asked for BMI to be dismissed at that  
24 point, and Your Honor indicated that although you  
25 didn't think there was any claim against BMI, you

Page 25

1 would wait until the entire testimony had been  
2 finished before you ruled.

3 BMI believed we were out of the case shortly  
4 after the end of the testimony because we thought we  
5 had reached an agreement, a settlement agreement, Your  
6 Honor was aware of that, that called for us receiving  
7 certain documents from Mr. Kinder and Mr. Bacal so  
8 that we could make switches to our records. We didn't  
9 get those agreements. In fact, we received a copy of  
10 an E-mail that Anne had sent to Dr. Kinder saying BMI  
11 wants your agreement; you don't have to give BMI  
12 anything.

13 Notwithstanding that, this summer at his --  
14 at his deposition, he did, in fact, give us that.

15 When we spoke on Friday, you indicated, once  
16 again, that you weren't sure why we were still in the  
17 case, to which I agreed, and you said, would it be  
18 possible for BMI to make the changes to Bacal's  
19 records so it would all be over. I looked at the  
20 settlement agreement that Ms. Bryant had reached with  
21 Mr. Bacal. I said, fine, and you said prepare an  
22 Order, and I did. And this Order instructs BMI to  
23 change its records, and when you sign it, we'll be  
24 happy to do so.



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(Handing to the Judge and co-counsel.)

THE COURT: All right. Has anyone seen this Order yet?

MR. MONAGHAN: No.

MS. SAFFER: No. Again this happened on Friday.

THE COURT: All right.

MS. SAFFER: The Order says we will make the changes Ms. Bryant requested. So, I find it hard to see how she could object, since we are giving her, in fact, what she asked for.

I want to back up a little bit because I really feel it's necessary to address the points that were made in the opening by Mr. Monaghan.

If you look at the original Complaint filed in this case, it alleged that BMI is guilty of having participated in a fraud and not filling our fiduciary duties, because Mr. Kinder had made changes to the records, fraudulently and BMI had acquiesced to those changes. We indicated that we had never changed any of our records as a result of instructions from Mr. Ford.

Subsequently, Ms. Bryant, Mr. Ford, reached a settlement agreement. Mr. Ford's testimony, as you

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will hear in deposition, said he never changed any of his registrations.

There is no evidence whatsoever that BMI ever changed a single record pertaining to Ms. Bryant. There was original testimony that there was confusion over the dates. It became clear that the date indicated on the registration, 1993 was a date in which we changed our computer records, and, so, everything got in 1993 date, if it had been registered earlier, but the substance didn't get changed. And the difficulty is apparently that Ms. Bryant is disturbed that she's not being credited correctly or fully for music that she wrote.

It's not my place to opine on that. That may be true, that may not be true, I don't know, and, I say, I, on behalf of BMI, BMI doesn't know. There is no way BMI can know those things.

Ms. Bryant's attorney points to a paragraph in the affiliation agreement and says in Paragraph 11 that that obligates BMI to look out for her interest. And the response that I had is that if you look at the language, it, first of all, gives BMI a right not an obligation. Second of all, it would mean that BMI would have to favor Ms. Bryant over Mr. Kinder, Mr. Bacal, hundreds of thousands of other writers.

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BMI's not the Judge. You're the Judge. You determine what her interests may be. We follow the instructions given by a Court. We're not a Judge, we're not a jury. We are -- our practice is, as Ms. Bryant is aware, and as she testified, and as a BMI witness will testify if we have to go forward, to receive these registrations, these cue sheets, from the people who make the programs. Whatever they tell us is what we put down. If they change the music, if they substitute music, if they hire somebody to make an arrangement and decide that the shares should be different, that's what we follow. We don't make any independent evaluation. We don't determine one person's rights vis-a-vis another person's rights.

And, furthermore, when we get a registration, we have no way of knowing what that represents. We have hundreds of thousands of musical compositions. Titles are not protected by copyright. If Paul Lennon wrote -- excuse me -- Paul Lennon -- John -- excuse me -- John Lennon wrote Yesterday. If I turn around and I write a song, and I call it Yesterday, and I register it with BMI, they'll take it. They won't credit me with his song if his song is reported because it will say John Lennon's Yesterday. It won't say Judy Saffer's yesterday. But, otherwise, they

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don't know; BMI can't know.

The burden and the expectation that is being put upon BMI is totally unrealistic. No court has ever found that BMI has an independent fiduciary duty to each writer and each publisher. We have a contractual obligation to do our best to pay them the royalties that come to us.

As Mr. Monaghan said and admitted just this morning, he's not alleging that we kept any money. If we paid money to Ford Kinder that should have gone to Anne by her evaluation, she should get that money from Ford Kinder.

She, in fact, testified during the course of her trial that a lot of registrations were made by Mr. Dobishinski, who was her attorney and her representative and she and Ford were partners and they shared. We write checks based upon what's written on the registration. If she and Mr. Kinder choose to share, divide it up, whatever they want to do, it's their business.

The rights that were granted to BMI, in her contract to BMI, and every writers contract to BMI, authorizes BMI to license their music for public performance to people who use music. We're not involved in mechanicals. We're not involved in any

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1 other portion of the rights, only the performance on  
2 media like radio, television, whatever it may be or  
3 even ring tones, as Your Honor pointed out. And, in  
4 fact, Ms. Bryant has received money from BMI for ring  
5 tones.

6 BMI shouldn't be in this case. BMI -- there  
7 has been no -- not a scintilla of proof at all that  
8 BMI has participated in any wrongdoing. We make up  
9 nothing. We change nothing. If new registrations  
10 came in from a new production company, that, in fact,  
11 didn't properly credit Ms. Bryant, her lawyer has  
12 every opportunity to go and sue the production  
13 company, as, in fact, he has sued Sunbow. It's not  
14 BMI's role. Our role is simply to license her work on  
15 her behalf, which we do to the best of our ability.

16 I sincerely hope once again you will consider  
17 dismissing BMI from this litigation.

18 THE COURT: All right. Just a moment.

19 You've heard Mr. Monaghan say that Ms. Bryant  
20 only gets 8% of the royalties that she claims she is  
21 entitled to for transformers.

22 Now, would you know where the rest of those  
23 royalties went?

24 MS. SAFFER: If -- wherever it is that said  
25 that she got eight-and-a-half percent, or whatever,

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1 lists the other writers that were credited with the  
2 remaining percentages. We didn't set up that  
3 percentage. The production company did, the people  
4 who use the music.

5 Your Honor, it may very well be that all of  
6 the music out there, with -- on the transformer show  
7 has, at its very basis, work written by Anne Bryant.  
8 I don't know. I'm not a musicologist. But the  
9 copyright law says that the copyright owner has the  
10 right to make changes, adaptations, arrangements, and  
11 how they then credit people, if they decide her  
12 contribution is worth 8% or 50%, I don't know. I take  
13 what they give me because they own the copyright and  
14 they have the right to make that evaluation.

15 THE COURT: So, if Sunbow owns the copyright,  
16 Sunbow gets to decide who gets what percentage?

17 MS. SAFFER: Correct, correct.

18 THE COURT: All right.

19 All right. I thank you all. Rather than put  
20 Ms. Bryant on the stand right now and then take a  
21 break in a few minutes from now, we're going to take a  
22 ten minute break. I'll see you back here at a little  
23 after 11:00 o'clock.

24 MR. MONAGHAN: One quick question, Judge.

25 THE COURT: Yes?

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1 MR. MONAGHAN: I thought you said, ad  
2 nauseam, no more motions, and here I am --

3 THE COURT: Well, in limines, I can see  
4 motions in limine before you start a trial.

5 MR. MONAGHAN: Yes, I understand, Judge, but  
6 we've known about the trial for months and months.  
7 Couldn't they have served these motions --

8 THE COURT: Well, I understand. I'm not  
9 making excuses for anybody, but I'm going to take the  
10 motions and read them, as I have everything else.

11 You notice my glasses have been getting  
12 bigger since this trial started, and I'm not blaming  
13 anybody for it.

14 One thing I want to tell you, a slight change  
15 in plans. At the present time we're not having court  
16 tomorrow morning until 2:00 in the afternoon, at which  
17 time you have until 5:00 to finish up that deposition,  
18 whatever you want us to see.

19 Wednesday we have a full day.

20 Thursday, unfortunately, I have a hospital  
21 appointment at 8:00 o'clock in the morning and I will  
22 not be out of that until the next day. So, I arranged  
23 us to have next Monday as a fill-in for Thursday. So,  
24 there won't be any court on Thursday, but there will  
25 be court next Monday. We may even go over until

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1 Tuesday if I can get that cleared off.

2 MR. MONAGHAN: Okay, Judge.

3 THE COURT: Okay. Have a break. See you in  
4 a few minutes.

5  
6 (Whereupon a recess was taken at  
7 approximately 10:55 A.M.)  
8 (Court reconvened at approximately 11:15 A.M.)  
9

10 THE COURT: Let us have Ms. Bryant back on  
11 the stand.

12 MS. SAFFER: Excuse me. Before we get into  
13 substance, we're a little confused on calendar and the  
14 like.

15 THE COURT: Okay.

16 MS. SAFFER: Because we thought this would  
17 end this week, I have scheduled some stuff for Tuesday  
18 and Thursday of next week. Monday is okay for me.

19 THE COURT: All right.

20 MS. SAFFER: Just trying to -- you will be --  
21 we will be resuming on Friday?

22 THE COURT: Right.

23 MS. SAFFER: Friday, and then ...

24 THE COURT: Monday.

25 MS. SAFFER: Monday; okay. We're just

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1 clarifying. Thank you very much.  
 2 THE COURT: Sure.  
 3 Yes, please.  
 4  
 5 (Whereupon the Plaintiff, Anne Bryant,  
 6 resumes the witness stand.)  
 7  
 8 THE WITNESS: How are you?  
 9 THE COURT: Good. It's been a while; but  
 10 you're still under oath. It stays with you forever.  
 11 THE WITNESS: All right.  
 12 THE COURT: All right. We're back on  
 13 Cross-examination. Go ahead.  
 14 MS. PHARES: We are back on Cross-  
 15 examination, but our case has sort of changed a little  
 16 bit, so ...  
 17 THE COURT: All right.  
 18 MS. PHARES: So, I would like to begin, Your  
 19 Honor, partly to orient us, and -- and also I hope to  
 20 save some time is to offer two admissions, documents  
 21 as admissions. The first is Defendant's Exhibit Y  
 22 that we're offering for identification, is Page 32  
 23 from our trial date of July 9, 2004, and the -- the  
 24 testimony, it relates to -- relating to Ms. Bryant's  
 25 testimony that she does not contend that Sunbow has

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1 received any of the performance royalties from BMI  
 2 that were due to her. And I'll offer it for  
 3 identification.  
 4 THE COURT: All right. Has it already been  
 5 marked?  
 6 MS. PHARES: We've put a sticker on it, but  
 7 it has not been.  
 8 THE COURT: And it is "X", did you say?  
 9 MS. PHARES: It's Y.  
 10 THE COURT: Y.  
 11  
 12 (PLAINTIFF'S EXHIBIT Y - TWO PAGES OF  
 13 TRIAL TRANSCRIPT FROM JULY 9, 2004 -  
 14 MARKED FOR IDENTIFICATION.)  
 15  
 16 MS. PHARES: And I think we have a copy for  
 17 Your Honor as well.  
 18 THE COURT: Okay.  
 19 MS. PHARES: The front page is just for  
 20 identification, and this is -- do you have an  
 21 objection to it, Pat.  
 22 MR. MONAGHAN: I haven't seen it yet.  
 23 MS. PHARES: I'm sorry.  
 24 MR. MONAGHAN: I don't think it's something  
 25 that is normally an exhibit. It's part of the record,

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1 there's no doubt, but why would you just offer a  
 2 portion of testimony? It's not something --  
 3 THE COURT: Well, supposedly it's an  
 4 admission.  
 5 MR. MONAGHAN: It is as it is. I mean, we  
 6 can't complain about the testimony.  
 7 I guess I have no objection.  
 8 THE COURT: All right.  
 9 Ms. Saffer?  
 10 MS. SAFFER: No objection, Your Honor.  
 11 THE COURT: All right it's accepted into  
 12 evidence.  
 13  
 14 (PLAINTIFF'S EXHIBIT Y - TWO PAGES OF  
 15 TRIAL TRANSCRIPT FROM JULY 9, 2004 -  
 16 RECEIVED IN EVIDENCE.)  
 17  
 18 MS. PHARES: And then, Your Honor, I'm also  
 19 offering as --  
 20 THE COURT: Maybe so that the record is  
 21 clear, read what you claim is the admission.  
 22 MS. PHARES: And the admission is: And you  
 23 don't have a dispute -- hang on; let's see.  
 24 "All right. Now, if you turn to the writer's  
 25 share, turn to the writer's share of this" -- and this

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1 was -- I was pointing to our easel, if you remember --  
 2 "you're not saying, are you, that BMI paid any part of  
 3 the writer's share to Sunbow, are you, or to its  
 4 publishing companies?  
 5 "No.  
 6 "Okay. So, you're okay with this and nothing  
 7 was paid to Sunbow.  
 8 "Nothing that I know of."  
 9 And then Mr. Monaghan confirms, "I just want  
 10 to make sure we're talking about public performance  
 11 royalties." And I agree with him, "public performance  
 12 royalties is all that's at issue here."  
 13 THE COURT: All right. Thank you.  
 14 MS. PHARES: All right. And then, Your  
 15 Honor, I'd like to offer as an admission Ms. Bryant's  
 16 affidavit dated December 6, 2005. This is the -- this  
 17 is the affidavit that she submitted in support of her  
 18 motion to amend her Complaint. And we have marked  
 19 this as Defendant's Exhibit Z.  
 20  
 21 (PLAINTIFF'S EXHIBIT Z - AFFIDAVIT  
 22 OF ANNE BRYANT DATED 12/6/05 - MARKED  
 23 FOR IDENTIFICATION.)  
 24  
 25 THE WITNESS: We can't have any more. End of



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1 the alphabet.  
 2 MS. PHARES: Oh, we can double up. We're  
 3 really clever.  
 4 MR. MONAGHAN: What's the date on the  
 5 affidavit again?  
 6 MS. PHARES: December 6, 2005.  
 7 Specifically, if you're asking for the  
 8 particular language that we're referring to, it is on  
 9 Page 5 to 6, and it is specifically the Footnote 3.  
 10 "Although this is the Jem feature song  
 11 agreement, not the Jem theme song agreement, I have  
 12 accepted it as stating the terms of my Sunbow  
 13 agreements with Jules and Joe Bacal and Sunbow  
 14 agreements related to Sunbow Productions."  
 15 THE COURT: All right.  
 16 Mr. Monaghan?  
 17 MR. MONAGHAN: No objection.  
 18 THE COURT: All right. It's in evidence.  
 19  
 20 (PLAINTIFF'S EXHIBIT Z - AFFIDAVIT OF ANNE  
 21 BRYANT DATED 12/6/05 - RECEIVED IN EVIDENCE.)  
 22  
 23 MR. MONAGHAN: Do we have exhibits  
 24 in-between, all the way through?  
 25 MS. PHARES: Uh-huh.

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1 MR. MONAGHAN: I don't have that on my  
 2 Official Court Reporter's list of exhibits. It only  
 3 went through Defendant's ... I have up to J.  
 4  
 5 (Off the record discussion.)  
 6  
 7 MS. PHARES: That's A to J was our trial.  
 8 The framed issue hearing picks up from then on, but  
 9 we've agreed that that's all part of our trial record.  
 10 MR. MONAGHAN: I understand. That's fine.  
 11 MS. PHARES: I'll just give this to you if  
 12 you need to refer to it.  
 13 MR. MONAGHAN: Sorry for the interruption.  
 14 THE COURT: Go ahead.  
 15 CROSS-EXAMINATION BY MS. PHARES:  
 16 Q. Ms. Bryant, would you please turn to Page 2 of that  
 17 Defendant's Exhibit Z?  
 18 A. Yes.  
 19 Q. And in that, if you look at the Paragraph D, you were  
 20 asking the Court to amend the pleadings to state  
 21 claims agreed to written contracts with Sunbow; isn't  
 22 that right?  
 23 A. Yes.  
 24 Q. And when you submitted this affidavit, you were asking  
 25 the Court to rely on the statement you made in the

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1 affidavit, weren't you?  
 2 A. Which affidavit?  
 3 Q. The one in front of you.  
 4 A. Oh. Oh, this affidavit?  
 5 Q. Yes.  
 6 A. Yeah.  
 7 Q. So, would you please turn to Page 5? And in Paragraph  
 8 3, didn't you ask the Court to amend the -- the  
 9 Amended Complaint to state claims for breach of  
 10 written agreements, including a certain Jem agreement  
 11 dated June 1986, dealing with my performance and  
 12 royalty rights?  
 13 A. Yes.  
 14 Q. That referred to agreements in the plural, didn't it?  
 15 A. No, it says written contracts, including a certain Jem  
 16 agreement, singular. Right?  
 17 Q. Well, a contract was in the plural, wasn't it?  
 18 A. Well, if this Jem agreement is being used for all of  
 19 the compositions, then it would be a single contract  
 20 being used for all of the contracts.  
 21 Q. Look at the Footnote 3.  
 22 A. Okay. I understand that.  
 23 Q. That's -- that refers to Sunbow agreements, related to  
 24 Sunbow Productions, does it not, in Footnote 3 at the  
 25 bottom of Page 6?

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1 A. Yes, yes.  
 2 Q. Okay. And that's the Jem agreement that you referred  
 3 to, the one that you refer to as the one that you and  
 4 Ford Kinder signed; isn't that right?  
 5 A. Yes, we both signed it.  
 6 Q. And in the statement after the words Jem agreement,  
 7 you refer to a Footnote 3; right?  
 8 A. Yes.  
 9 Q. Okay. And that's again where you refer to a plural  
 10 agreements?  
 11 A. Yes.  
 12 Q. And earlier in the -- and earlier in this trial, you  
 13 agreed that during your March 31, 2003, deposition,  
 14 you said that Ford Kinder had told you that there were  
 15 written agreements for the compositions at issue in  
 16 this case; right?  
 17 A. He told me that there were agreements on a lot of  
 18 these -- on most of these things is what he said. I  
 19 think that's what I testified to.  
 20 Q. Okay. Now, I want to give you what's already in  
 21 evidence as Defendant's Exhibit M (handing.) This is a  
 22 Jem agreement that you signed, isn't it?  
 23 A. Yes.  
 24 Q. All right. And just for the record, the date of this  
 25 agreement, which is written in hand on Line 1, is June

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1 5, 1985, isn't it?

2 MR. MONAGHAN: June 1st.

3 Q. June 1, 1985. Isn't it?

4 A. Yeah, we inserted this date here.

5 Q. The year date is 1985, isn't it?

6 A. Right. This is back-dated.

7 Q. I'm just -- I'm just asking a question, all right?

8 A. Okay.

9 Q. And that's -- that's the only one I need you to

10 answer, Ms. Bryant.

11 A. All right.

12 Q. In your -- in your December 2005 affidavit, that's the

13 Defendant's Exhibit Z, we were just looking at --

14 A. Yeah.

15 Q. -- on Page 5, your date is 1986. That's a typo, isn't

16 it?

17 A. Well, I don't know if it's a typo, Mrs. Phares,

18 because I can't recall whether this says 1985 or 1986.

19 And I know by all the correspondence and by the fact

20 that we negotiated this agreement for a couple of

21 years that we didn't sign it until 1987 or so, and

22 they -- they asked us to insert a back date, and I

23 don't know which back-date it was.

24 Q. I'm just asking you: What is the date on the top of

25 the agreement that you signed?

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1 A. Okay. It's either June 1, 1985, or it's June 1 1986.

2 Q. And because you can see a 6 there?

3 A. Is that a five or a six?

4 Q. You mean you don't know?

5 A. Yeah. What I do know is it wasn't signed until 1987,

6 so...

7 Q. I'm not asking you when it was signed. I asked you

8 what is the date at the top of the agreement.

9 A. Okay. I'm not sure.

10 Q. Okay.

11 A. You told me I could say that; right?

12 Q. Fine.

13 THE COURT: Yeah.

14 A. I'm not sure if that's a five or a six. I know it was

15 signed way later.

16 Q. And you always discussed the Sunbow agreements with

17 Ford Kinder, didn't you?

18 A. This one we certainly did.

19 Q. Did you discuss all the agreements with Ford Kinder?

20 A. We work -- when we worked for Griffen Bacal, we had

21 pretty much the way we worked together --

22 Q. I'm just talking about Sunbow.

23 A. Then I would say, yes, all Sunbow agreements were --

24 were discussed with -- by me and Ford and that -- that

25 all of the Sunbow interest in the Griffen Bacal's --

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1 they were involved in some Griffen Bacal agreements,

2 too. So, we didn't discuss all of them.

3 MS. PHARES: Your Honor, I'm going to make an

4 objection and please ask that the witness be

5 instructed just to answer the question that I have

6 asked.

7 THE COURT: Well, that will move things

8 along.

9 THE WITNESS: I understand, but, I mean,

10 it's --

11 MS. PHARES: It will.

12 THE WITNESS: Sometimes you just can't say

13 yes or no.

14 THE COURT: Well, I agree with you. And

15 we've been through this. If you're asked a yes or no

16 question, the answers are yes, no, or, I can't answer

17 it that way.

18 THE WITNESS: I can't answer it that way.

19 That's a new one. I like that. Thank you.

20 Q. Okay. And after you discussed the Sunbow agreements

21 with Mr. Ford -- I mean with Mr. Kinder, you signed

22 them, didn't you?

23 A. We mutually agreed to sign them. We signed them,

24 yeah.

25 Q. Would you please turn to Page 10 --

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1 A. Oh, this one.

2 Q. -- of Exhibit M?

3 A. I don't remember signing any other agreements, though.

4 I remember this one.

5 Q. Have you got Page 10 in front of you?

6 A. Yes.

7 Q. Do you see a paragraph that begins with a lower case C

8 in parentheses?

9 A. Yes.

10 Q. Doesn't that paragraph say this agreement contains the

11 entire understanding of the parties hereto, relating

12 to the subject matter herein contained, and this

13 agreement cannot be changed, rescinded, or terminated

14 orally?

15 A. Yes, I see that.

16 Q. That provision means that the agreement cannot be

17 changed with an oral agreement, doesn't it?

18 A. Yes.

19 Q. Kinder and Bryant signed this agreement, didn't it?

20 A. Yes.

21 Q. Okay. But you're still claiming that you have an oral

22 agreement with Sunbow; is that correct?

23 A. I'm saying that an oral agreement preceded this

24 agreement, not that it followed this agreement. It

25 preceded this agreement, as it did with everything we



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1 did for Tom and Joe and --

2 Q. An oral agreement with Sunbow. You're saying that you

3 have -- I just want to -- I just want to make sure.

4 You're contending that you have an oral

5 agreement with Sunbow that preceded this written

6 agreement; is that correct?

7 A. Yes, that's the way we get our jobs. They lay it out

8 for us orally, and then if it goes final, it becomes a

9 written contract.

10 Q. Okay. And would you please turn to Page -- to Page 6

11 of the agreement?

12 A. Yes, Ma'am.

13 Q. Okay. This is the continuation of Section 6A, which

14 begins on Page 4 and 5, that sets out when Sunbow

15 agrees to pay publishing royalties to Kinder and

16 Bryant; isn't that right?

17 A. This -- this is about where they won't pay royalties,

18 isn't it?

19 Q. The whole section relates to publishing royalties; is

20 that correct?

21 A. Yes, that's good; right.

22 Q. Okay. And isn't it true that the first two-and-a-half

23 lines on Page 6 state: No royalty shall be payable

24 hereunder for professional material not sold or

25 resold. Further, no royalty shall be payable to

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1 writer with respect to uses of the -- Capital M --

2 Music, except as hereinabove expressly set forth.

3 Is that correct?

4 A. Yes.

5 Q. Okay. So, how does an oral agreement with Sunbow for

6 royalties that exceed this agreement co-exist with a

7 statement in the agreement you signed?

8 MR. MONAGHAN: Object to the form of that

9 question. Presupposes a whole issue that hasn't even

10 been addressed, and there's no foundation for this.

11 THE COURT: Well, the witness has testified,

12 as I take it, that there was an oral agreement that

13 probably, as I understand it, was part of the

14 negotiations that are going back and forth, and

15 eventually that became M.

16 THE WITNESS: That's right.

17 THE COURT: So, I don't know that there's

18 anything wrong --

19 THE WITNESS: Everything we did --

20 THE COURT: -- with the question.

21 MR. MONAGHAN: My problem with the question

22 is that there's part of it that's saying, how is it

23 that you're asking for royalties that exceed. We

24 haven't even -- we haven't even gone there yet.

25 There's been no foundation for any of that. That

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1 question had inherent in it, how is it you're asking

2 for royalties which --

3 THE COURT: Okay. I'll tell you what, as to

4 form, I'll sustain the objection.

5 Ask the question again.

6 Q. All right. How does an oral agreement with Sunbow

7 co-exist with that statement in the agreement you

8 signed?

9 A. The oral agreement was a rough layout of the terms,

10 the basic terms that -- that laid out our

11 compensation, how we would be paid and how -- what

12 Sunbow needed to acquire. That's what the basic terms

13 of all working for in my industry begin with a phone

14 call; here's the terms, and if it even lives long

15 enough to go a written agreement, then it's hashed out

16 with more detail.

17 So, nobody said anything about using the

18 music hereinabove over the phone call. They said, you

19 get the royalties, we need the copyright. If we

20 choose your song, if it goes to final -- there are a

21 lot of ifs. This is a competition with ten different

22 people writing on it. It's not a work for hire until

23 I say it's a work for hire. It's all orally done.

24 That's -- the whole industry works that way, and they

25 don't make up ten contracts for people -- nine of whom

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1 are going to lose.

2 So, I don't think that my -- my oral contract

3 said, this is how much money we'll get. You'll get

4 your royalties. My writer's royalties were always

5 reserved. Those basic things were laid out in the

6 oral agreement before we said, okay, we'll take a

7 crack at it.

8 And that's all it is. It's a simple sketch-

9 out of the basic terms.

10 Q. All right; fine. Now, I'm going to hand you two

11 documents that are already an exhibit, Defendant's

12 Exhibit J and O (handing.)

13 MR. MONAGHAN: Can you identify those for the

14 record, please?

15 MS. PHARES: Yes. The first is a letter from

16 Mr. Dobishinski to Carole Weitzman relating to the

17 amendment of the Jem agreement.

18 A. O, and what?

19 Q. I beg your pardon?

20 A. Which do you want?

21 Q. That's J?

22 A. You want J?

23 Q. And O.

24 A. Okay.

25 Q. So, first, looking at Exhibit J, when Kinder and

Page 50	Page 52
<p>1 Bryant wanted an amendment to the Jem agreement, Mr.</p> <p>2 Dobishinski wrote to Sunbow and proposed it, didn't</p> <p>3 he?</p> <p>4 A. I don't know whether he wrote to them or not.</p> <p>5 Is that here?</p> <p>6 Q. Are you looking at Exhibit J?</p> <p>7 A. I was looking at O. Okay. Giving me two things at</p> <p>8 once.</p> <p>9 Q. Right. And I asked you, let's look first at Exhibit</p> <p>10 J. And I'm saying: So, when Kinder and Bryant wanted</p> <p>11 to amend the Jem agreement, Mr. Dobishinski wrote to</p> <p>12 Sunbow and proposed it, didn't he?</p> <p>13 A. I don't see that he wrote to Sunbow. He wrote to us.</p> <p>14 Did he write to Sunbow?</p> <p>15 Yeah; Carole. Here it is on the back. Let</p> <p>16 me see.</p> <p>17 He copied somebody. He copied everybody.</p> <p>18 Q. So, Ms. Bryant, let's do this this way.</p> <p>19 A. Yeah.</p> <p>20 Q. The front of it -- let's do it page by -- the front of</p> <p>21 this is -- this is a letter from Mr. Dobishinski to</p> <p>22 Carole Weitzman; correct?</p> <p>23 A. Yes. Oh, there, I see it.</p> <p>24 Q. And he copied you on it; is that correct?</p> <p>25 A. And he copied us on it.</p>	<p>1 MS. PHARES: It is in evidence.</p> <p>2 MR. MONAGHAN: I don't know how it would have</p> <p>3 gotten in evidence. It's not signed.</p> <p>4 THE COURT: Well, I refer to the Court</p> <p>5 Reporter.</p> <p>6</p> <p>7 (Off the record discussion.)</p> <p>8</p> <p>9 MR. MONAGHAN: I'm going to ask that they be</p> <p>10 stricken. There's just no basis for these getting in.</p> <p>11 Ms. Weitzman wasn't here. They're unsigned. Maybe I</p> <p>12 missed the ball at the last hearing, but they</p> <p>13 shouldn't be in evidence.</p> <p>14 MS. PHARES: Your Honor, this document has a</p> <p>15 word, name Bill written in hand after the name Mr.</p> <p>16 Dobishinski on the From line, and he is sending two</p> <p>17 proposed amendments. They would not be signed because</p> <p>18 they haven't been accepted yet.</p> <p>19 THE COURT: Well, it's still in evidence.</p> <p>20 MS. PHARES: Right.</p> <p>21 THE COURT: You can't knock things out of</p> <p>22 evidence now. You get a chance to argue when it comes</p> <p>23 in, not when it's in.</p> <p>24 Let's go ahead.</p> <p>25 MS. PHARES: All right.</p>
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<p>1 Q. And the first page of it is Revised Amendment, dated</p> <p>2 March 15, 1986, of Agreement dated June 1, 1985,</p> <p>3 between Sunbow Productions, Inc., and Kinder and</p> <p>4 Bryant Limited.</p> <p>5 A. Right.</p> <p>6 Q. And, two, red line copy of the arrived Revised</p> <p>7 Amendment; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And then when you turn to Page 2, do you see a red</p> <p>10 line copy of the amendment?</p> <p>11 A. I assume it's red, yeah.</p> <p>12 Q. Well, it has underline --</p> <p>13 A. Underlined is true, but --</p> <p>14 Q. -- not red.</p> <p>15 A. -- that's because it's a photocopy.</p> <p>16 Q. And then if you turn to the page that has a -- the</p> <p>17 production number at the bottom SUN 0400, that is the</p> <p>18 clean copy of that amendment; isn't it?</p> <p>19 A. It looks like it. I'm assuming that it is. You read</p> <p>20 it; right?</p> <p>21 MR. MONAGHAN: You know, Your Honor, if I</p> <p>22 may?</p> <p>23 A. Can I --</p> <p>24 MR. MONAGHAN: I'm trying to see if this is</p> <p>25 in evidence, this exhibit.</p>	<p>1 Q. Now, Ms. Bryant, if you look at Exhibit O. Ms.</p> <p>2 Bryant?</p> <p>3 A. Yeah.</p> <p>4 Q. Is this not the amendment to the Jem agreement signed</p> <p>5 by Mr. Kinder and Carole Weitzman?</p> <p>6 A. Let me just make sure of that. This is part of what</p> <p>7 was two years ago.</p> <p>8 Yes, this appears to be that.</p> <p>9 Q. All right. So, when Kinder and Bryant wanted to amend</p> <p>10 the Jem agreement, it knew that it had to be in</p> <p>11 writing, didn't it?</p> <p>12 A. Yes.</p> <p>13 Q. And when Kinder and Bryant wanted to amend the Jem</p> <p>14 agreement, it knew how to do it; didn't it?</p> <p>15 A. I don't know what that question means. I don't</p> <p>16 understand the question. You mean in writing?</p> <p>17 Q. Yes.</p> <p>18 A. Yeah.</p> <p>19 Q. It knew the procedure. It wrote, it proposed</p> <p>20 something, and then it was finally put into writing;</p> <p>21 is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Now, you've testified earlier in this trial</p> <p>24 about an oral understanding that Kinder and Bryant</p> <p>25 claims that it had with Joe Bacal in 1984, when Kinder</p>

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1 and Bryant first started working with GBI; is that  
 2 right?  
 3 A. Right.  
 4 Q. And you've testified that the oral agreement was based  
 5 on some earlier agreements between Michelin Co. and  
 6 GBI; is that correct?  
 7 A. That's correct.  
 8 Q. So, am I correct that you're saying that when you and  
 9 Ford Kinder started Kinder and Bryant in 1983, you had  
 10 the same agreement with GBI that Michelin Co. had had  
 11 with GBI?  
 12 A. It was very -- a hand shake, rough, you know, same  
 13 basic principles that we always worked under, yeah.  
 14 Q. Is it a yes or a no?  
 15 A. Well, I don't know to say that the exact ink on -- on  
 16 the Michelin Company and ours was the same. I mean,  
 17 time went by. Rates went up, prices went up, you  
 18 know.  
 19 Q. In 1983; or, actually, you testified you did this in  
 20 '84.  
 21 A. Yes.  
 22 Q. And it was the same agreement, essentially?  
 23 A. On principle it was the same agreement. We kept our  
 24 royalties. We got a creative fee. They got the  
 25 copyright because they needed the copyright. It was

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1 just the same structure, and it's the way I work with  
 2 everybody.  
 3 Q. All right. Now, is it correct that you're contending  
 4 that Kinder and Bryant also had an oral agreement with  
 5 Sunbow, in addition to the written agreement that  
 6 Kinder and Bryant signed with Sunbow for each of the  
 7 TV series?  
 8 A. Well, we only did one original TV series. The others  
 9 were just taken from the Sunbow library and used for  
 10 their other TV series. We only did one, Mrs. Phares.  
 11 Q. You have named several productions that were done for  
 12 Sunbow as part of your Complaint; correct? Those are  
 13 the agreements that I'm talking about.  
 14 A. Could you help me out by telling me what you're  
 15 talking about? Are you talking about the Jem show?  
 16 That was contracted with Jem.  
 17 Q. I'm talking about all of the productions that you told  
 18 Justice O'Rourke that you were suing on on the first  
 19 day of trial.  
 20 A. The transformers, we did not do the television show.  
 21 They simply took their Sunbow library of music and  
 22 used it in the transformers TV show and on all their  
 23 products. They were the common publisher between  
 24 Griffen Bacal and Sunbow Productions. I mean,  
 25 anything that was listed --

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1 Q. Are you saying you did not do -- you didn't have an  
 2 agreement with Sunbow with -- relating to  
 3 transformers?  
 4 A. I don't know. I don't remember that.  
 5 Q. You don't know that you didn't have one?  
 6 A. I know I had certain pieces of paper that -- that --  
 7 that were related to that.  
 8 Q. I am talking about agreements with Sunbow.  
 9 A. I don't know. I don't -- I don't have them, and I  
 10 wish you did.  
 11 Q. But you have agreed that the Jem agreement is the form  
 12 of agreement that governed all your relationships with  
 13 Sunbow. That was what you stated in your affidavit,  
 14 that is what the Court found in his decision on June  
 15 15th at the end of the framed -- ruling on the framed  
 16 issue hearing. That's -- that's your testimony; is  
 17 that correct?  
 18 A. Yes. And all of the -- the agreements with Sunbow's  
 19 Productions all track with this agreement.  
 20 Q. So, I am asking you: Are you contending whether --  
 21 that you also have a written -- an oral agreement in  
 22 addition to your written agreements with Sunbow?  
 23 A. No. I'm saying that all -- all the jobs I got from  
 24 GBI, Sunbow, anybody involved in -- in that double  
 25 company, all of them came to me as all my jobs today

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1 come to me, on spec, with the terms being given  
 2 orally. That's how the industry runs. Later on,  
 3 those terms are fleshed out in a written contract if  
 4 lightning strikes and something goes on the air.  
 5 Q. So, you're saying that if there was later a written  
 6 contract on one of those speculative offers, that then  
 7 the only thing that governs is the written agreement;  
 8 is that what you're saying?  
 9 A. Yes, there's nothing about the oral agreement that was  
 10 more than the written agreement. It was the basis of  
 11 the written agreement. That's what I'm saying.  
 12 MS. PHARES: Well, Your Honor, on the basis  
 13 of that, it seems to me that I am going to make a  
 14 motion for a directed verdict right now, because the  
 15 Court has already found that the Sunbow agreements  
 16 governed all of her relationships. They have a merger  
 17 clause in them. She apparently is conceding that any  
 18 prior oral agreement was merged into them; and we're  
 19 done.  
 20 THE COURT: Mr. Monaghan?  
 21 MR. MONAGHAN: That's easy. The Jem  
 22 agreement that was just inquired about relates to a  
 23 particular subject matter. The particular subject  
 24 matter were the feature songs for the shows. Does not  
 25 cover, does not describe the subject matter as



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1 anything other than that. Doesn't describe  
2 transformers, doesn't identify the Jem themes, which  
3 are the more valuable property. So that the merger  
4 clause, which I don't know why counsel keeps stressing  
5 it, can only relate to that particular composition.  
6 That merger clause in the Jem agreement can only  
7 relate to the -- the feature songs and -- and what it  
8 says is, we cannot have an oral agreement that  
9 contravenes this written agreement about the subject  
10 matter, the feature songs. So, we're still here, and  
11 we're still going to continue our trial because --

12 THE COURT: Hold on.

13 Is it -- now, your client has testified that  
14 there could be oral agreements beforehand and  
15 generally were, and then they would be incorporated  
16 into a written final agreement.

17 MR. MONAGHAN: Correct.

18 THE WITNESS: Uh-huh.

19 THE COURT: Is that your position?

20 MR. MONAGHAN: That's her testimony,  
21 regardless of my position.

22 THE COURT: Okay. So, then, and this Court  
23 has found sufficient evidence to say that this  
24 happened in all the cases.

25 Now, I understood that we were going to have

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1 exactly what was going on before the Jem agreement was  
2 produced in 2004. We didn't know whether it was  
3 signed or not.

4 I mean, I don't understand a position that  
5 says, please, Judge, apply this written agreement, the  
6 Jem agreement, to all of the relationships between the  
7 parties, and then says on the other hand, no, don't  
8 apply it to all of the other relationships.

9 MS. PHARES: Your Honor --

10 THE COURT: No, I have said I am applying it  
11 to all relationships.

12 MR. MONAGHAN: We would ask you to do so.  
13 And the merger clause, again, does not bar any  
14 testimony as to the other agreements. It's a merger  
15 clause as to --

16 THE COURT: Listen, if -- if there was a  
17 contract like M on Jems for every piece of work done  
18 by the Plaintiff, then everyone of them had a merger  
19 clause in it --

20 MR. MONAGHAN: Right.

21 THE COURT: -- and, so, in order to change  
22 that, you would have needed a writing.

23 MR. MONAGHAN: Agreed.

24 THE COURT: Okay. Now --

25 MR. MONAGHAN: No dispute.

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1 some evidence that there were other oral agreements as  
2 to -- as to some of the songs that -- or musical  
3 pieces that were done by the Plaintiff that you're  
4 going to introduce in this case. Are you?

5 MR. MONAGHAN: We're going to introduce,  
6 because we do not have a written agreement, we do not  
7 have written agreements as to, Judge, these other  
8 compositions. So that, in order for the Court to  
9 apply the Jem agreement concept of royalties,  
10 reservation of royalties, there must be a foundation  
11 that that was the agreement that applied to the other  
12 compositions.

13 You have found, but you did not identify in  
14 your opinion, Judge, which agreements you found to be  
15 valid and binding. The transformers agreement that  
16 was submitted is not valid and binding. It is still  
17 challenged.

18 THE COURT: Your client stated she doesn't  
19 even know if there was a written agreement on  
20 transformers.

21 THE WITNESS: It was with Griffen Bacal  
22 initially, but that wasn't it because that's not our  
23 agreement.

24 THE COURT: All right.

25 MR. MONAGHAN: That's true, Judge, and that's

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1 THE COURT: Now, counsel says, well, that's  
2 the end of their case because there is no proof at all  
3 about written agreements or -- excuse me -- oral  
4 agreements that superseded or in any way changed the  
5 written agreements.

6 MR. MONAGHAN: I'm actually very puzzled,  
7 Your Honor. A merger clause does not bar any other  
8 composition.

9 THE COURT: Yeah, but we're going on the  
10 assumption that everyone had a contract that had a  
11 merger clause, what are you going to prove about oral  
12 contracts, then?

13 MR. MONAGHAN: We're going to prove, and  
14 proof that's probably half-way or three-quarters of  
15 the way there, that the Jem royalty provisions in  
16 Exhibit M apply to each of the other compositions,  
17 including transformers.

18 You actually found that, I think, already.

19 MS. PHARES: Your Honor, you have already  
20 found that these agreements apply. What Mr. Monaghan  
21 wants you -- is trying now to do is just what I had  
22 predicted. He is trying to evade the fact that you  
23 have already denied an amendment to the Complaint for  
24 us to start this case over again, on a breach of  
25 contract on the written agreements. And that is not

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1 in this case, and, apparently, neither is an oral  
2 agreement that we all thought was going to be proved.  
3 And, as we understand it, and which is what we had  
4 thought before, is that there are written agreements.  
5 They all have merger clauses. Ms. Bryant is now  
6 saying that any oral agreement she made was turned  
7 into a written agreement which had a merger clause.

8 We do not understand how this case can  
9 continue.

10 MR. MONAGHAN: Well, very simply, even as to  
11 the Jem written agreement we have, it provides for  
12 royalties and accountings. So, if we just isolate  
13 that agreement, we have --

14 MS. PHARES: The agreement --

15 MR. MONAGHAN: Excuse me one second.

16 MS. PHARES: We -- you were denied a motion  
17 to amend to sue on that agreement.

18 MR. MONAGHAN: The agreement is in the case,  
19 Your Honor. We haven't gone six years, had it  
20 produced in the middle of trial, had motions galore,  
21 and have it introduced in evidence by counsel.

22 MS. PHARES: To prove that there was no oral  
23 agreement. That was the purpose.

24 MR. MONAGHAN: It's in for all purposes --

25 MS. PHARES: No, it is not.

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1 MR. MONAGHAN: -- all evidence. Well, that's  
2 for the Judge to rule.

3 You cannot -- we can't come this far, we  
4 can't come this far, have this agreement dropped on us  
5 in 2004, after we demanded it in 2003. This is all  
6 part of the record. And then counsel say, okay, too  
7 bad, tough break; although we dredge it from the briny  
8 deep in 2004, it's not in the case.

9 They wanted you to put it in the case. It's  
10 in the case. They're stuck with it. There are  
11 admissions that I'm going to read in as part of my  
12 affirmative case as to what they said in their papers  
13 before Your Honor.

14 This agreement isn't a one-way street. It  
15 doesn't just work for Sunbow. Those clauses that we  
16 now agree, all agree, Your Honor and counsel, those  
17 clauses give my client rights.

18 MS. PHARES: Your Honor --

19 THE COURT: Okay. Hold on, hold on.

20 MR. MONAGHAN: They give her --

21 THE COURT: Do we now agree that we are not  
22 arguing over oral contracts of any sort; that that's  
23 out of the case?

24 MR. MONAGHAN: I don't -- if I may, Your  
25 Honor? I don't understand how we -- it's not an

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1 either or proposition.

2 THE COURT: Sure it is. Your client said  
3 that there was a time, with each of these things, when  
4 it was orally discussed, and then eventually it would  
5 be incorporated, all of the things that were orally  
6 discussed, into a written contract.

7 MR. MONAGHAN: Right.

8 THE WITNESS: Can I say something?

9 MR. MONAGHAN: No.

10 THE COURT: Just a minute.

11 All right. So, now, what is it about oral  
12 contracts that you want this Court to know, other than  
13 what your client has testified to?

14 MR. MONAGHAN: I want this Court to apply the  
15 written agreement, the Jem agreement, to all the  
16 relationships, just as you found and they  
17 acknowledged. That's what I want. We went up on  
18 appeal on Statute of Frauds when we didn't have a  
19 written agreement, and all I did was, once that  
20 written agreement came into the case, evidence comes  
21 in from any source, Plaintiff, Defendant. It came  
22 into the case, and there's no appellate court in the  
23 land that would not say that that agreement is not in  
24 the case. It's in the case for all purposes. It's  
25 for the Court to construe. It's for us to take

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1 advantage of whatever clauses benefit the Plaintiff  
2 and the royalty clauses -- that's why she's getting a  
3 check; that's why she got a check before the trial.

4 MS. PHARES: There was no appeal on the  
5 Statute of Frauds position, by the way.

6 MR. MONAGHAN: In any event, those issues are  
7 gone. We're not here to contravene the Jem agreement,  
8 the written Jem agreement. We're not here to say  
9 there's a separate oral agreement. We're here to say  
10 that applies to that, to the Jem, and orally she will  
11 testify that the -- and did, just now, those -- those  
12 terms, the reservation of writers royalties, they  
13 apply across the board. That's what they said.  
14 That's what they said.

15 MS. PHARES: Your Honor?

16 THE COURT: Yes?

17 MS. PHARES: When we started this case --  
18 let's just... When we started this case, we said  
19 there was an agreement, and Mr. -- and the Plaintiff  
20 denied it. And I did, indeed, beseech you -- I think  
21 that was the word I used, and I lost, and I lost --  
22 and Plaintiff -- and Plaintiff prevailed, and we went  
23 ahead to prove the oral agreement that she claimed.  
24 And then we found the written agreements. But we were  
25 already well into trial by the time those written



<p style="text-align: right;">Page 66</p> <p>1 agreements were found, and then the Plaintiff denied  2 the -- the signatures. And then we had to prove the  3 signatures. And then a year later, after we had been  4 in this case for three years, she asked to amend her  5 Complaint, and you denied it, as was appropriate  6 because it was too late. It was not well-founded, and  7 it was certainly prejudicial to Sunbow. And, now, you  8 have, I thought, given great indulgence -- you had  9 then found, you then indeed found, as a result of the  10 framed issue hearing, and having heard all the  11 testimony about the fact that everyone signed the  12 exact same agreement, that she indeed signed her  13 agreement, that the Jem agreement and that form  14 governed all of her relationships. Then she asked,  15 no, I have another oral agreement. And the Court had  16 indulged her. And we have come today, and now we hear  17 that, in fact, no, she has conceded that those oral  18 agreements were indeed merged into the -- into the  19 written agreement. But those written agreements were  20 not sued on, they are not part of the pleadings, and  21 we are not here to construe those agreements, which is  22 what Mr. Monaghan is asking. We were here today only  23 to find out whether there was an oral agreement that  24 could somehow co-exist with the written agreements.  25 It cannot, and therefore --</p>	<p style="text-align: right;">Page 68</p> <p>1 principal attorneys in chambers. You can decide for  2 yourself who the principal attorneys are.  3 THE WITNESS: Your Honor, can I just ask you  4 a question in general, general, not about the case?  5 THE COURT: Talk to your attorney first;  6 okay?  7 THE WITNESS: It's just that if I bought a  8 house --  9 THE COURT: Yeah.  10 THE WITNESS: -- wouldn't I talk to my  11 attorney, say I want this and that and that? And then  12 he'd say, Okay, I'll do the contract. I mean, that's  13 what I'm saying.  14 THE COURT: Okay.  15 THE WITNESS: I think everything begins with  16 an oral contract.  17  18 (Whereupon a recess was taken at approximately 11:55  19 AM.)  20  21 (Luncheon recess taken at approximately 12:40 PM.)  22  23 (Court reconvened at approximately 2:35 PM.)  24  25 THE COURT: All right. We're back on the</p>
<p style="text-align: right;">Page 67</p> <p>1 THE COURT: Well, Counsel, isn't she still  2 entitled to an accounting?  3 MS. PHARES: She is -- she may be. She can  4 bring her case on those -- on the agreements if she  5 thinks so. But the fact of the matter is that she  6 is paid royalties on the publishing rights that are  7 laid out in them. What Mr. Monaghan and his client  8 want to start now is a new case trying to interpret  9 these agreements to include something more.  10 But the other thing is is that if she has a  11 complaint about her accounting, the agreement says you  12 are to bring a complaint within one year of receiving  13 your royalty statement.  14 Now, we paid royalties, it's true, in -- the  15 last time was 2004, but we received no complaint about  16 that royalty statement.  17 THE COURT: So, she's just been paid another  18 one in 2006.  19 MS. PHARES: So, if she wants to bring a  20 complaint about them, she is entitled to do that, but  21 that's not what this case is. This case started about  22 her claim that she had an oral agreement, and we have  23 now shown that she did not have an oral agreement, and  24 that's the end of this case.  25 THE COURT: All right. I want to talk to the</p>	<p style="text-align: right;">Page 69</p> <p>1 record.  2 All right, Ladies and Gentlemen, I took as  3 much time as I could during lunch and the -- and I  4 could not answer some of the questions that were in my  5 mind. So, I'm going to take some more time this  6 afternoon and tomorrow morning. At 2:00 o'clock  7 tomorrow afternoon, I'll address everybody's concerns,  8 including I'm go through these Orders. I would like  9 to have BMIs Order looked at by everybody and your  10 analysis of that. We certainly might get rid of that.  11 I will look at the suppression request, though it  12 seems to me that the EBT that you were going to use  13 tomorrow may not be relevant anymore; but I'll talk to  14 you about that tomorrow.  15 In any case, that's for 2:00 o'clock  16 tomorrow. And, at this time, we still have Ms. Bryant  17 on the stand.  18 And, Mrs. Phares, are you finished or do you  19 have --  20 MS. PHARES: Well, I'll just ask a few more  21 questions.  22 But, Your Honor, I would like to confirm on  23 the record what I think was said before we all  24 adjourned, and in which I think you indicated in  25 chambers, was that the theory of there being an oral</p>

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<p>1 contract still in this case is now over.</p> <p>2 THE COURT: That's correct.</p> <p>3 CROSS-EXAMINATION BY MS. PHARES: (Cont'd)</p> <p>4 Q. Ms. Bryant, is Exhibit M still there by your side.</p> <p>5 A. Yes, that's it. It's funny. The show used to be</p> <p>6 called M.</p> <p>7 Q. Would you please turn to Page 7 of the agreement?</p> <p>8</p> <p>9 (The witness complies)</p> <p>10</p> <p>11 Q. And there's a carry-over paragraph at the top of the</p> <p>12 page.</p> <p>13 A. Yeah.</p> <p>14 Q. And the last sentence of it, if you would look at it,</p> <p>15 says: All royalties, statements, and other accounts</p> <p>16 rendered by company shall be binding upon contractor</p> <p>17 and not subject to any objection by contractor, unless</p> <p>18 specific objection in writing, stating the basis</p> <p>19 thereof, is given to company by contractor by one year</p> <p>20 from the date rendered.</p> <p>21 Is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now, do you understand that this relates to your</p> <p>24 obligations under the agreement with respect to any</p> <p>25 royalty payments that are made to you?</p>	<p>1 not.</p> <p>2 Q. You have no recollection?</p> <p>3 A. I don't know if -- we did so many things in writing,</p> <p>4 but I don't know if we did that.</p> <p>5 Q. You have no record of having made an objection in</p> <p>6 writing?</p> <p>7 A. I have to defer to my attorney. I don't know if we</p> <p>8 ever made that particular objection.</p> <p>9 Q. Do you understand that if you did not make an</p> <p>10 objection, that after one year you were barred from</p> <p>11 making an objection?</p> <p>12 A. That's what this says.</p> <p>13 Q. Do you have any recollection of whether or not you</p> <p>14 retained an auditor to have the records audited?</p> <p>15 A. No, I didn't.</p> <p>16 Q. Do you recall whether or not you have ever, in the</p> <p>17 past, made a written complaint to Sunbow with respect</p> <p>18 to any of the royalty statements that you've received?</p> <p>19 A. No. I made a phone call once about it, and I was told</p> <p>20 that I had no -- I called Sony after I got my BMI</p> <p>21 catalog, and I said, You're my publisher. And they</p> <p>22 said, well, we control all your compositions. I said,</p> <p>23 Well, I've never gotten any statements from you. And</p> <p>24 then I guess that was at the very beginning when I got</p> <p>25 my catalog and I saw that Sony was my publisher. I</p>
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<p>1 A. But none were made. Yeah, I understand that. So, how</p> <p>2 could I object?</p> <p>3 Q. Do you recall before -- before -- in 2004 that you had</p> <p>4 received royalty payments from Sunbow?</p> <p>5 A. Not from Sunbow.</p> <p>6 Q. Well, there were royalty payments received from Sunbow</p> <p>7 accompanied by Sony ATV royalty statements?</p> <p>8 A. Yeah, I think it was Sony.</p> <p>9 Q. Okay. So, you remember receiving those?</p> <p>10 A. Yes.</p> <p>11 Q. Did you -- do you understand from this language that</p> <p>12 if you have an objection to those statements, that you</p> <p>13 are required to make an objection in writing within</p> <p>14 one year?</p> <p>15 A. Yes; but we were about to go to court, so I just gave</p> <p>16 it to my attorney to put in his trust account. I</p> <p>17 didn't at all accept it as a valid accounting.</p> <p>18 Q. Did you make -- did you make an objection to those</p> <p>19 accounting statements to Sunbow?</p> <p>20 A. We didn't understand them, so we asked you what they</p> <p>21 were. And you said that's what she's owed. That's</p> <p>22 all I remember about it.</p> <p>23 Q. I'm just asking you this: Did you make an objection</p> <p>24 to Sunbow in writing?</p> <p>25 A. I really don't know. I don't know whether we did or</p>	<p>1 didn't know Sony was my publisher.</p> <p>2 Q. At the beginning of this agreement, you understand</p> <p>3 that the -- that Kinder and Bryant is the contractor;</p> <p>4 is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And Sunbow is the company; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. So, did you make any claim to Sunbow?</p> <p>9 A. No, I didn't know to make a claim. They didn't give</p> <p>10 me any statements.</p> <p>11 Q. You don't recall receiving statements --</p> <p>12 A. No.</p> <p>13 Q. -- from Sony before -- before the trial last year, in</p> <p>14 2004?</p> <p>15 A. Right -- the day -- a day or so before the trial, just</p> <p>16 like this one, we got a statement.</p> <p>17 Q. You did receive the statements in 2004?</p> <p>18 A. I got one statement and a check.</p> <p>19 Q. You got -- were there several pages of statements that</p> <p>20 were submitted?</p> <p>21 A. I don't really remember. I remember there were some</p> <p>22 wacky percentages on there that I didn't understand,</p> <p>23 and I didn't understand how it was arrived at, the</p> <p>24 particular figure was arrived at. But something came</p> <p>25 in with a check, and it came in just about two days</p>

<p style="text-align: right;">Page 74</p> <p>1 before the trial, which is the same thing that</p> <p>2 happened for this trial.</p> <p>3 MS. PHARES: Your Honor, if I may have a</p> <p>4 minute?</p> <p>5 THE COURT: Yes.</p> <p>6</p> <p>7 (Off the record discussion among</p> <p>8 Ms. Phares and co-counsel.)</p> <p>9</p> <p>10 A. And we questioned you.</p> <p>11 MR. MONAGHAN: Excuse me, Your Honor. We're</p> <p>12 missing those exhibits, and I think perhaps I know --</p> <p>13 I suggest that we might have left it in your chambers.</p> <p>14</p> <p>15 (Off the record discussion.)</p> <p>16</p> <p>17 MS. PHARES: Pat, do you have Plaintiff's</p> <p>18 Exhibit 17, 18, and 19?</p> <p>19 MR. MONAGHAN: I did. The court set of</p> <p>20 exhibits?</p> <p>21 MS. PHARES: Yeah, the court set of exhibits</p> <p>22 is what I'm looking for.</p> <p>23 MR. MONAGHAN: They're here.</p> <p>24 MS. PHARES: We're just trying to find</p> <p>25 the ... That's 17, 18, and 20.</p>	<p style="text-align: right;">Page 76</p> <p>1 MS. PHARES: Okay. I'd like to offer in</p> <p>2 evidence as Defendant's double AA, as double AA, a set</p> <p>3 of documents bearing Sunbow Production Numbers 526 to</p> <p>4 564, which we don't have a sticker for.</p> <p>5 MR. MONAGHAN: Just give us a description.</p> <p>6 MS. PHARES: Which is a set of royalty</p> <p>7 statements from -- for the period -- well, for several</p> <p>8 periods; but January to June 1998; from January to</p> <p>9 June 1999; from July to December, 1998; from July to</p> <p>10 December 1999; from January to June 2000; from July to</p> <p>11 December 2000; from January to June 2001; from July to</p> <p>12 December 2001; from January to June 2002; from July to</p> <p>13 December 2002; from January to June 2003, and from</p> <p>14 July to December 2003.</p> <p>15 Q. Do you recognize those statements, Ms. Bryant</p> <p>16 (handing)?</p> <p>17 A. No.</p> <p>18 Q. Well, these are the statements that were delivered to</p> <p>19 you with the check that you remember.</p> <p>20 A. When, just the other day, yesterday?</p> <p>21 Q. No, in 2004.</p> <p>22 A. I didn't get anything like this. I got a check. I</p> <p>23 remember a check. I don't remember anything like</p> <p>24 this. I never got this.</p> <p>25 Q. You have no recollection of that?</p>
<p style="text-align: right;">Page 75</p> <p>1</p> <p>2 (Mr. Korik hands exhibits to Ms. Phares.)</p> <p>3</p> <p>4 MS. PHARES: Thank you.</p> <p>5 Q. Ms. Bryant, I'm handing you documents that you</p> <p>6 produced to us which are accounting statements from</p> <p>7 1989 (handing).</p> <p>8 A. Yeah, I remember this.</p> <p>9 Q. And 1990 and 1993.</p> <p>10 A. Right.</p> <p>11 Q. 1991.</p> <p>12 A. Right.</p> <p>13 Q. Do you recognize these?</p> <p>14 A. Yes.</p> <p>15 Q. These were sent to you by your lawyer Mr. Dobishinski?</p> <p>16 A. Mr. Dobishinski was not my lawyer. He was Sunbow's</p> <p>17 administrator.</p> <p>18 Q. In any event, did you ever make a written claim about</p> <p>19 any of these royalty statements?</p> <p>20 A. Well, I took them to be on honest statements. I had</p> <p>21 no dispute with them. How would I know?</p> <p>22 Q. I just asked you a simple question. Did you make any</p> <p>23 claim in writing to Sunbow in connection with these</p> <p>24 statements?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 77</p> <p>1 A. No. This is explanation for what that check for</p> <p>2 \$4,000.00 was.</p> <p>3 What did you say, it was six years of</p> <p>4 royalties?</p> <p>5 Q. I just read -- whatever I read is what they were.</p> <p>6 A. Yeah, six years of royalties.</p> <p>7 Q. That's correct.</p> <p>8 A. Because this would have gotten a letter. I didn't get</p> <p>9 something like that. I got a little piece of paper</p> <p>10 and a check. Just like the other day, I got a little</p> <p>11 piece of paper and a check. It doesn't explain what</p> <p>12 anything was for.</p> <p>13 Q. And then after the check, you did also receive -- or</p> <p>14 maybe your lawyer hasn't given it to you -- but you</p> <p>15 received statements accompanying the check last week</p> <p>16 as well, did you not?</p> <p>17 A. No. Last week I got Bryant, Anne/Kinder, Ford. It</p> <p>18 didn't say what it was for. It didn't say what the</p> <p>19 songs were. It didn't say the percentages on what</p> <p>20 basis. You're telling me with the millions of copies</p> <p>21 of CDs and DVDs you sold that I got \$4,000.00 and I'm</p> <p>22 supposed to accept this? I didn't get this. I did</p> <p>23 get this.</p> <p>24 Q. Well, I don't know -- what is it that you say that you</p> <p>25 did get and you didn't get?</p>



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1 A. I got this from Bill Dobishinski.  
 2 Q. What's the exhibit number on it?  
 3 A. Exhibit ... I can't even -- I don't know what it  
 4 says. It looks like -- what does that say?  
 5 Q. It's Plaintiff's Exhibit 17.  
 6 A. Yeah, okay.  
 7 Q. And it's Plaintiff's Exhibit 18, and it's Plaintiff's  
 8 Exhibit 19.  
 9 A. Yeah. That's from my own records. This has to do  
 10 with thousands upon thousands of sales of mechanical  
 11 royalties that I never -- I never got this, and you're  
 12 saying it's a four-year statement.  
 13 Q. All I'm asking you --  
 14 A. Why did you wait for four years to send it to me? How  
 15 dare you.  
 16 THE COURT: Let's not have an argument,  
 17 please.  
 18 Q. There's no question pending.  
 19 A. I know.  
 20 Q. So, you don't recall receiving the statements in 2004?  
 21 MR. MONAGHAN: That's not her testimony. Her  
 22 testimony is she didn't get it.  
 23 A. I didn't get it. I got a check and a piece of paper,  
 24 something said music royalties, I think, or publishing  
 25 royalties. And the other day I got this piece of

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1 paper that said different periods, and it said  
 2 publishing music royalties it said. And then the next  
 3 day something came along that said, In Account with  
 4 Anne Bryant; not like this. That just said Anne  
 5 Bryant this much money, and so and so that much money,  
 6 and it was -- it was not this.  
 7 Q. All right. And just let me ask you, just for your  
 8 information, we've provided the royalty statements to  
 9 your lawyer on Friday morning. Just, you perhaps --  
 10 have you seen those statements?  
 11 A. I saw that -- I saw that. It came in the other day.  
 12 Q. You've seen those statements?  
 13 A. Yeah.  
 14 Q. Thank you. That's all I wanted to know.  
 15 But, in any event, have you ever made a claim  
 16 on a royalty statement that you have received from  
 17 Sony -- from Sunbow? I beg your pardon.  
 18 A. No, I haven't from Sunbow.  
 19 MR. MONAGHAN: Let me put an objection on the  
 20 record, just to make my record. The notion that the  
 21 royalty statement would be binding as to information  
 22 that isn't covered in the royalty statement is  
 23 completely incorrect. If there is a royalty statement  
 24 that sets forth information from which a reasonable  
 25 person or the artist in question could glean

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1 information that would trigger a duty of inquiry,  
 2 fine; that would be one thing. But the case here and  
 3 the case that's set forth in our pleadings is for an  
 4 accounting for information we don't have about various  
 5 uses of the music.  
 6 So, we can proceed down this road all we  
 7 wish, but it's still only going to deal with those  
 8 particular statements that are proven to have been  
 9 received by the Plaintiff.  
 10 Q. And my only question is, is whether or not you had  
 11 made a claim that you thought that there was something  
 12 faulty about the royalties?  
 13 A. Yes, that's why we're here.  
 14 Q. And you made a claim in writing to Sunbow; is that  
 15 what you're stating?  
 16 A. They're all kinds of writings to Sunbow having to do  
 17 with my royalties.  
 18 Q. No, no, I'm not talking about all kinds of royalties.  
 19 I want you to tell me specifically what writing you  
 20 presented to -- and you understand that it said,  
 21 according to this, you are to state a specific  
 22 objection in writing to Sunbow. Did you ever make --  
 23 A. I'm sorry. I'm not an attorney, but I don't know why  
 24 this lawsuit, suing for my royalties, is not a writing  
 25 to Sunbow. There's been a lot of writing to Sunbow

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1 about my mechanical royalties and my sync fees. Those  
 2 are writings to Sunbow. Consider yourself notified  
 3 for six years now.  
 4 Q. Ms. Bryant, have you ever asked -- have you ever  
 5 arranged for an accounting using an auditor to audit  
 6 the records of your publishing --  
 7 A. I'm suing for an accounting.  
 8 MS. PHARES: Your Honor, I don't think  
 9 there's any -- this is all the record that I can make  
 10 today based on the fact that --  
 11 THE COURT: All right.  
 12 MS. PHARES: -- we were not on notice that we  
 13 were proceeding on anything relating to accountings  
 14 under this. There's certainly no notice in the  
 15 Complaint, and there was certainly no notice as of  
 16 last Friday.  
 17 THE COURT: All right.  
 18 Mr. Monaghan?  
 19 MR. MONAGHAN: Thank you, Judge. Redirect.  
 20 We're still missing Volume 1 of the appendix,  
 21 Your Honor, and we're missing the other binder, but  
 22 I'll proceed with what I have.  
 23 THE COURT: Well --  
 24 MR. MONAGHAN: It's what I showed you in  
 25 chambers, but I don't know what happened to it



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1 thereafter.

2 MR. KORIK: Your Honor, it was --

3 MR. MONAGHAN: It's the other volume of the  
4 appendix, and I showed you the Complaint.

5 THE COURT: Well, I'll tell you what, I will  
6 go look because I could have put it somewhere. I  
7 doubt it, but we'll take a short recess, ten minute  
8 recess.

9 MR. MONAGHAN: Thank you, Your Honor.

10  
11 (Recess taken at approximately 2:55 PM.)

12  
13 (Court reconvened at approximately 3:10 PM.)

14  
15 THE COURT: Okay. Let's see. Ms. Saffer,  
16 are you --

17 MS. SAFFER: I'm so sorry.

18 THE COURT: Do you have any questions to ask  
19 anybody?

20 MS. SAFFER: No, I will, maybe after Pat does  
21 his Redirect have some questions but not at this  
22 juncture. Thank you.

23 THE COURT: Okay; all right.

24 MS. SAFFER: I apologize, Your Honor.

25 THE COURT: That's all right.

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1 MR. MONAGHAN: May I proceed, Judge?

2 THE COURT: Yes, please.

3 MR. MONAGHAN: Do you have Exhibit M, the Jem  
4 agreement?

5 THE WITNESS: I have it here.

6 MR. MONAGHAN: Oh, you have it. Okay.

7 REDIRECT EXAMINATION BY MR. MONAGHAN:

8 Q. Mrs. Bryant, Ms. Phares had asked you questions about  
9 the Jem agreement, and we've all agreed that Exhibit  
10 M, the Jem agreement, applies to all the relationships  
11 in the case?

12 A. Yes.

13 Q. Okay. And the Court has found there's valid written  
14 agreements, and you understand that?

15 A. Yes.

16 Q. Okay. And you understand that, for a period of time,  
17 you were telling the Court there was no written  
18 agreement; do you recall that?

19 A. I don't remember whether there was one, but I didn't  
20 have one. I didn't have a copy. I didn't know if we  
21 signed it.

22 Q. Now, Ms. Phares also directed your attention to the  
23 last page, Page 10, and she asked you, I believe, to  
24 read that into the record, which is, and I'll repeat  
25 it, that's Subparagraph 13C, quote: This agreement

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1 contains the entire understanding of the parties  
2 hereto relating to the subject matter herein  
3 contained, and this agreement cannot be changed,  
4 rescinded, or terminated orally.

5 Do you remember that?

6 A. Yes, I remember that.

7 Q. Okay. And that's the clause that we've been calling  
8 the merger clause, the integration clause.

9 A. Uh-huh.

10 Q. What was the subject matter to which that clause in  
11 this agreement referred?

12 MS. PHARES: Objection. Calls for a legal  
13 conclusion.

14 MR. MONAGHAN: No, it doesn't. Her  
15 understanding.

16 THE COURT: I'll allow it. Go ahead.

17 A. Well, this agreement was not changed or terminated  
18 orally, so, I don't know ...

19 Q. To what does this particular Jem agreement apply?

20 MS. PHARES: Objection, Your Honor. I  
21 thought the oral agreement theory was now behind us.

22 A. To all --

23 THE COURT: Just a moment, just a moment.

24 You have to let an attorney state an objection.

25 Go ahead.

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1 MS. PHARES: My understanding is that the  
2 merger clause which was relevant to Plaintiff's -- to  
3 Plaintiff's oral agreement theory is now behind us  
4 since we have conceded that all of the oral agreements  
5 about which she engaged were merged into the later  
6 written agreements.

7 THE COURT: Well, I'll tell you, Counselor, I  
8 don't quite know where Mr. Monaghan is going, and,  
9 therefore, I tend to let attorneys ask a couple of  
10 questions. I'm going to allow him to go ahead.

11 Q. What songs were the subject matter of this particular  
12 Jem agreement?

13 A. Oh, the Jem songs, the Jem feature songs.

14 Q. Okay. And is that -- was that specifically the Jem --

15 MS. PHARES: Objection, Your Honor.

16 THE COURT: Yes.

17 MS. PHARES: We're once again construing an  
18 agreement which it describes on Page 1 what it covers,  
19 and this is a legal conclusion from this -- from  
20 this --

21 THE COURT: Well --

22 MS. PHARES: -- witness.

23 THE COURT: Well, it's in evidence, and I'll  
24 allow the question. Let's go ahead.

25 MR. MONAGHAN: She's answered the question.

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1 Q. Your answer is this -- this agreement --  
 2 MS. PHARES: Excuse me. Objection. She said  
 3 that she answered it. We don't need to have you  
 4 repeat it.  
 5 MR. MONAGHAN: Okay. Thank you, Ms. Phares.  
 6 I appreciate the correction.  
 7 Q. All right. Now, Ms. Phares also showed you what she  
 8 characterized as an accounting. That was dubbed  
 9 Exhibit double A. Do you recall this?  
 10 A. Yes.  
 11 Q. This is not in evidence. But do you recall her  
 12 showing you this account?  
 13 A. Yes.  
 14 Q. And you recall your testimony that you didn't receive  
 15 this?  
 16 A. I don't remember receiving that. I remember a check.  
 17 Q. Okay. But take a look at what Ms. Phares has referred  
 18 to as an accounting.  
 19 MS. PHARES: Objection, Your Honor. These  
 20 were referred to as royalty statements, and I'm -- you  
 21 know, I can't look back at the record. We don't have  
 22 it today. They are royalty statements.  
 23 MR. MONAGHAN: Okay. Royalty statements.  
 24 I'll take that.  
 25 MS. PHARES: Mr. Monaghan knows that these

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1 are royalty statements.  
 2 THE COURT: All right. They're royalty  
 3 statements. Go ahead.  
 4 MR. MONAGHAN: Well, is counsel stipulating,  
 5 then, that these are not the accountings that are  
 6 referred to in Paragraph 6 of the Jem agreement?  
 7 MS. PHARES: No.  
 8 MR. MONAGHAN: Okay. I didn't think so.  
 9 That's why I'm asking.  
 10 A. I don't remember getting this or these monies.  
 11 Q. Okay. Is there anything in that document that relates  
 12 to this Jem agreement?  
 13 A. Right off I see some Jem songs.  
 14 Q. Is there anything that tells you that you're getting  
 15 these royalty statements accompanied by remuneration  
 16 rendered twice during each calendar year during which  
 17 royalties are payable? In other words, how do you  
 18 connect that document to that provision in the  
 19 agreement?  
 20 A. Well, I don't know if I can find it fast enough.  
 21 Q. I'm not asking you to do that. I'm asking you to --  
 22 A. No, but she read off -- she read off semi-annual  
 23 dates. That's the only thing I know. I haven't had a  
 24 chance to look at this particular accounting yet.  
 25 Q. Do these royalty statements tell you the number of

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1 units that have been sold?  
 2 A. It says "your share". And I don't know what my share  
 3 is. My share of what?  
 4 Q. Do these royalty statements tell you the amount of  
 5 sheet music which has been sold?  
 6 A. No, it just says --  
 7 Q. Do these royalty statements tell you the number of  
 8 piano copies sold?  
 9 A. No, no.  
 10 Q. Do these royalty statements tell you anything about  
 11 orchestrations for which 10% is required under the  
 12 agreement?  
 13 A. No.  
 14 Q. Do these royalty statements tell you anything about  
 15 song books, folios, or similar publications?  
 16 A. No.  
 17 Q. Do they tell you about any other uses of the music for  
 18 which you're supposed to get 50% according to that  
 19 agreement?  
 20 A. Well, in a quick look I don't see anything coming  
 21 anywhere near 50%. I just see a period received, and  
 22 then it says a hundred, and then it says, Amount  
 23 received and Your share.  
 24 MR. MONAGHAN: Okay.  
 25 A. And I don't know where -- my share seems to be

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1 repeatedly 229 -- point 973, not 50%.  
 2 Q. Okay. And against what information could you possibly  
 3 have used what you have in your hands now to determine  
 4 whether or not you were getting an accurate  
 5 accounting?  
 6 A. Nothing. I wouldn't be able to tell that.  
 7 Q. Now, counsel also made reference to the check that you  
 8 got last week. And I'm going to ask the Reporter to  
 9 mark this Plaintiff's 49 for identification, Your  
 10 Honor.  
 11 A. Do I get to take this home?  
 12 MR. MONAGHAN: We'll get you a copy.  
 13 THE WITNESS: I didn't get these checks.  
 14 MR. MONAGHAN: I asked the Reporter to mark  
 15 the exhibit.  
 16 THE COURT: Okay.  
 17 MR. MONAGHAN: I have a copy for Your Honor.  
 18 THE COURT: Yeah, sure.  
 19 MR. MONAGHAN: This is what I got, and I  
 20 received it -- I received it eventually by Mr. Knapp's  
 21 letter dated December 1, 2006, in the form that we've  
 22 given you.  
 23  
 24 (PLAINTIFF'S EXHIBIT NO. 48 - LETTER  
 25 AND ACCOUNTING STATEMENTS - MARKED

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1 FOR IDENTIFICATION.)

2  
3 MS. PHARES: These were the ones that -- Your  
4 Honor, I just want to make -- this is the one that was  
5 sent on Friday; right?

6 MR. MONAGHAN: Yeah.

7 MS. PHARES: Right, yes, of course I agree  
8 that they were sent to you.

9 MR. MONAGHAN: All right. Then we're going  
10 to offer Exhibit 49 in evidence.

11 THE WITNESS: It's three percent for the  
12 transformers.

13 MR. MONAGHAN: Wait, Anne.

14 MS. PHARES: But, Your Honor, just for the  
15 record, we also produced another set of these  
16 yesterday to Mr. Monaghan with base numbers so that we  
17 can refer to them, and we did it for that purpose.  
18 So, you might want to use that copy.

19 THE COURT: All right. This is 48 or 49?

20 MR. MONAGHAN: This is 49. So, will that be  
21 in evidence, Your Honor?

22 THE COURT: Objection?

23 MS. PHARES: Just one moment, Your Honor. I  
24 just want to make sure that this is indeed all of what  
25 we produced. And it's not, it's not.

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1 We produced -- yeah, we produced 27 -- I  
2 think pages of royalty statements. We can hand you a  
3 copy with the base numbers on them.

4 MR. MONAGHAN: And I endeavored to put  
5 together everything that you sent to us.

6 Well, how about we make this -- I don't have  
7 the time to compare, neither do you, Your Honor, but  
8 we'll make this 48A and deem it part of the exhibit.

9 THE COURT: Well, okay. I really want to  
10 have the exhibit --

11 MR. MONAGHAN: Mark it part of 48, then.

12 THE COURT: All right. It's all 48.

13 MS. PHARES: Your Honor, no. We have an  
14 objection here. First of all, this is a letter from  
15 my associate John Knapp, and he's enclosing the  
16 documents. This was on Friday morning. And there  
17 were 27 pages of them. Then attached to it are copies  
18 of --

19 MR. MONAGHAN: We don't accept that.

20 MS. PHARES: -- a letter from Mr. De Sousa of  
21 TV Loonland to Mr. Monaghan transmitting the check.  
22 That was not sent by Mr. Monaghan -- by Mr. Knapp.  
23 So, this is a little confusing, this exhibit is.

24 MR. MONAGHAN: I'm trying to have in one  
25 place, one exhibit, all the stuff we got lately

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1 relating to that check.

2 MS. PHARES: Well, you didn't manage to  
3 achieve that, I'm afraid.

4 MR. MONAGHAN: Well, I didn't also receive 27  
5 pages of royalty statements. So, if -- I'll mark it  
6 as a separate exhibit. I don't care -- or counsel can  
7 do it on her own, Recross.

8 THE COURT: Look, I have, I think, a copy,  
9 and there are 30 pages.

10 MS. PHARES: Yes, that's --

11 THE COURT: 30 pages.

12 MS. PHARES: That's the copy that we sent to  
13 Mr. Monaghan, and you were copied on it, Your Honor.

14 THE COURT: Right. And it's --

15 MS. PHARES: And Mr. Monaghan's copy does not  
16 have that many pages.

17 THE COURT: Okay. And, Mr. Monaghan, because  
18 we're getting near the holiday season, I'm going to  
19 give you this one, and then I'll get that one. Do you  
20 have it now?

21 MR. MONAGHAN: I think I have.

22 THE COURT: 30 pages in it?

23 MR. MONAGHAN: Is there, other than the cover  
24 letter -- I have 11 -- can I just look at it for a  
25 second, Judge?

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1 THE COURT: Yeah, yeah (handing).

2 MR. MONAGHAN: Well, this doesn't have the  
3 Sunbow Production numbers on it, but ...

4 MS. PHARES: That's right.

5 MR. MONAGHAN: For the purposes of my  
6 question --

7 MS. PHARES: We're going to do this -- I'm  
8 not going to stipulate to the exhibit going in if it's  
9 not the right exhibit.

10 MR. MONAGHAN: Okay.

11 THE COURT: Hold on. Then I have ten pages  
12 that are from your office.

13 MR. MONAGHAN: Yes, Your Honor.

14 THE COURT: Okay. Is that part of that  
15 exhibit, too?

16 MR. MONAGHAN: Yes.

17 MS. PHARES: But not ten pages.

18 THE COURT: Not ten pages.

19 MS. PHARES: I mean, he has bits of both  
20 communications.

21 THE COURT: Well, let's do this: Let's take  
22 the 30 pages, all right, and that's 48. All right?

23 MR. MONAGHAN: Then I'm going to offer 49,  
24 which was the cover letter, which is not part of the  
25 30 pages.



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1 THE COURT: Is that this letter from you?  
 2 MR. MONAGHAN: Yes.  
 3 THE COURT: Why do we need that?  
 4 MR. MONAGHAN: Well, this doesn't have a  
 5 check as far as I can tell.  
 6 THE COURT: Well, the one with the check is  
 7 really the one from Mr. De Sousa.  
 8 MS. PHARES: Right.  
 9 MR. MONAGHAN: Right.  
 10 THE COURT: So -- and that is, I think, three  
 11 or four pages, plus a copy of the envelope.  
 12 MR. MONAGHAN: I'm happy to substitute 30  
 13 pages that Ms. Bryant gave the Court -- Ms. Bryant --  
 14 Ms. Phares gave the Court underneath the cover letter  
 15 from Mr. Knapp, in lieu of the seven or eight pages I  
 16 received the first go 'round. I'm happy to substitute  
 17 what they say, and I'll take the letters off the top,  
 18 put that in there --  
 19 MS. PHARES: And make that one exhibit, but  
 20 don't put Mr. De Sousa's letter in it because it  
 21 appears as though Mr. Knapp sent that to you and he  
 22 did not.  
 23 MR. MONAGHAN: I agree. How about with that  
 24 stipulation? I agree.  
 25 MS. PHARES: So, we have two documents.

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1 MR. MONAGHAN: Mr. Knapp did not send me Mr.  
 2 De Sousa's letter. Mr. De Sousa sent the letter  
 3 directly to our office with the check on behalf of  
 4 Sunbow; came to our office directly, as addressed.  
 5 So, with that stipulation --  
 6 MS. PHARES: And would you tell me the base  
 7 stamps you've got? Just the first and the last.  
 8 MR. MONAGHAN: Up here I only have 1142.  
 9 MS. PHARES: To ...?  
 10 MR. MONAGHAN: To 1169.  
 11 MS. PHARES: Okay.  
 12 MR. MONAGHAN: Shall we put that in there?  
 13 MS. PHARES: Inclusive, yes.  
 14 MR. MONAGHAN: Inclusive, all inclusive. You  
 15 want the whole record?  
 16 THE COURT: Okay. That's what 37 pages?  
 17 Don't count them.  
 18 MR. MONAGHAN: Okay. I'm not good at it.  
 19 Okay. And that's in evidence, 48.  
 20  
 21 (Off the record discussion.)  
 22  
 23 (PLAINTIFF'S EXHIBIT NO. 48 - LETTER  
 24 AND ACCOUNTING STATEMENTS - RECEIVED  
 25 IN EVIDENCE.)

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1 MS. PHARES: Your Honor, just so -- there's  
 2 some confusion. Did you just say that the 47 was  
 3 withdrawn?  
 4 THE COURT: Yes.  
 5 MS. PHARES: Okay.  
 6 BY MR. MONAGHAN:  
 7 Q. All right, Ms. Bryant. I'm showing you now  
 8 Plaintiff's 48 in evidence. Are you familiar with  
 9 this exhibit now?  
 10 A. I'm familiar with this part of it, with the letter  
 11 that came from Mr. De Sousa, the check.  
 12 MS. PHARES: Your Honor, if Mr. Monaghan  
 13 stands back here, then Ms. Bryant will probably speak  
 14 loud enough so that we can all hear her.  
 15 THE WITNESS: That's true.  
 16 MR. MONAGHAN: I'll stand here.  
 17 THE COURT: Okay. Go ahead.  
 18 Q. Tell the Court and counsel which of these pages in  
 19 this exhibit in evidence you are familiar with and  
 20 you've seen?  
 21 A. First and foremost I got a check from Mr. De Sousa,  
 22 and I got a short statement with it with the check,  
 23 and that's all that came that day. It came by  
 24 international FedEx.  
 25

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1 Q. Okay. Now, what does that short statement tell you,  
 2 what information is provided in the short statement?  
 3 A. It just gave me several quarters, June 30, 2004, and  
 4 then U.S. dollars, 327; December 31, 2004, \$266.00;  
 5 June 30, 2005, \$205.00; and then a bump up December  
 6 31, 2005, \$5897 and change. And then one more  
 7 quarter. So, it's looks like one, two, three, four,  
 8 five quarters totaling \$7,417.00. That's what that  
 9 was, by global FedEx. And here's a copy of the FedEx.  
 10 Q. And the single page, that total there, the 7417.43  
 11 agrees with the amount on the check?  
 12 A. Yes.  
 13 Q. Yeah. And what does the check say?  
 14 A. The check?  
 15 Q. Does the check have any notation on it --  
 16 A. Yeah.  
 17 Q. -- as to why it's being given to you?  
 18 A. The check says music royalties.  
 19 Q. Okay. Now, just at this point, just limiting to that  
 20 short statement and the check, is there any way that  
 21 you can relate that check and that payment to any of  
 22 these payments that are to be made to you under the  
 23 Jem agreement?  
 24 A. I can only assume that they're accurate.  
 25 Q. Don't assume.



<p style="text-align: right;">Page 98</p> <p>1 A. I don't know, I don't know. They seem to be music 2 publishing royalty -- music publishing income. That's 3 all it says. But I don't know if they're accurate. 4 Q. Does it say anything about phonograph records sold, 5 piano copies -- 6 A. No, it's not specific. 7 Q. -- sheet music, the amount of units that have been 8 sold, where licenses have been granted to third 9 parties? 10 A. No, it's not specific. 11 Q. Is any of that information at all provided there? 12 A. No. 13 Q. Now, would you please look at the statements, the 14 so-called royalty statements. 15 By the way, who is the issuer of this royalty 16 statement? 17 A. Sony ATV Music Publishing, LLC. 18 Q. Do you have any agreement with Sony ATV Music 19 Publishing, LLC. 20 A. I never made an agreement with them. 21 Q. Okay. Do you know why Sony ATV, LLC, is sending you 22 this statement? 23 A. I know from the production -- document production in 24 this case and from my finally getting my -- 25 Q. No.</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Yes. 2 Q. Okay. You have "the company". Who's the company? 3 What's the company in the agreement? 4 A. Sunbow. 5 Q. And you have the contractor? 6 A. Kinder and Bryant. 7 Q. And who is the Writer? 8 A. Anne Bryant. Ford Kinder, too. 9 Q. And do you know why the writer is initial capped? In 10 other words, is the Writer a defined term in the 11 agreement? 12 A. Well, they determined the Writer up top as I remember. 13 Q. Okay. In the preamble of the agreement -- 14 A. Yes. 15 Q. -- paragraph? 16 MS. PHARES: Your Honor, the agreement speaks 17 for itself. 18 MR. MONAGHAN: It does. 19 MS. PHARES: It's ... 20 Q. So, ... 21 A. They call this collectively the Writer, us as 22 individual writers. 23 MR. MONAGHAN: Okay. 24 MS. PHARES: It refers to you jointly as the 25 Writer.</p>
<p style="text-align: right;">Page 99</p> <p>1 A. I just know that they seem to have taken over the 2 catalog in some way for Star Wild and Wild Star, 3 Sunbow's companies. 4 Q. Did you ever see any document, were you ever told by 5 Sunbow, did you ever receive a letter or anything that 6 told you we are now assigning the publishing from 7 Sunbow or Wild Star or Star Wild over to Sony ATV? 8 A. No, I was never notified. 9 Q. How can you tell whether or not you are getting a 10 royalty statement rendered by the company that is the 11 company mentioned in the Jem agreement versus some 12 third party, Sony ATV? How would one know? 13 A. By letterhead. 14 Q. Other than that. 15 A. Other than that, no. 16 Q. How do you know that Sunbow is endorsing the royalty 17 information that's set forth in this -- in this 18 document? 19 A. I don't know what Sunbow has done. 20 Q. Other than the fact that it came with a letter from 21 Mr. De Sousa? 22 A. Yes, it has a Sunbow Loonland insignia on it and it's 23 letterhead mark. 24 Q. By the way, the word "Writer" is in initial cap in 25 this agreement, is it not?</p>	<p style="text-align: right;">Page 101</p> <p>1 THE COURT: Please, go ahead. 2 MR. MONAGHAN: Your Honor, I'm going to 3 address now the question of whether or not there has 4 been an accounting issue in the case, and I'm going to 5 point to your decision dated May 28, 2004, right 6 before the last trial, and an Order of May 26, 2004. 7 And in that you said, quote: Following extensive 8 prior motion practice, Plaintiff's first Amended 9 Complaint specifically pleads two causes of action 10 against Defendant Bacal for unjust enrichment and 11 constructive trust and a single cause of action 12 against Defendant Sunbow, for which -- for unjust 13 enrichment, for which Plaintiff seeks compensatory 14 damages and an accounting -- and an accounting. 15 And I will point out that the Amended 16 Complaint set forth claim for an accounting. 17 MS. PHARES: Page? 18 MR. MONAGHAN: And also said -- 19 MS. PHARES: Your Honor? 20 MR. MONAGHAN: Okay. 21 MS. PHARES: -- if Mr. Monaghan's quoting from 22 the one of his many Complaints, I'd like to know which 23 one and what paragraph. 24 MR. MONAGHAN: Okay. Page 6, which deals 25 with the first amended cause of action allowed by the</p>

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1 Court against Defendant Sunbow for unjust enrichment,  
2 and, among other things, Paragraph 5 demands that the  
3 Court direct Sunbow to render a true and complete  
4 accounting as to any and all monies received -- or to  
5 be received by Defendant Sunbow from the production  
6 and exploitation of the foregoing compositions and  
7 that judgment be had in Plaintiff's favor for all such  
8 monies, together with interest and attorney's fees  
9 caused in the suit.

10 MS. PHARES: But this isn't an accounting on  
11 monies received by Defendant Sunbow.

12 MR. MONAGHAN: Oh, it is. It is. That's the  
13 damages phase. And requests --

14 THE COURT: I thought -- hold on. I thought  
15 that in one of the admissions that was read by Ms.  
16 Phares, that the Plaintiff agreed that there was no  
17 money that had gone to Sunbow that should have gone to  
18 her.

19 MR. MONAGHAN: For performance royalties.  
20 Performance royalties. We are not talking about  
21 performance royalties. This agreement licenses back  
22 to Ms. Bryant.

23 When the copyright was transferred -- and I  
24 don't think I'll get a fight on this one. When the  
25 copyright was transferred, all rights go over to

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1 Sunbow, all rights. But the coming back to the  
2 Plaintiff or the rights set forth in the agreement,  
3 which includes the writer's share of performance  
4 royalties. There's a separate clause in there.

5 MS. PHARES: Your Honor?

6 THE COURT: Hold on.

7 MR. MONAGHAN: In addition to that -- in  
8 addition to that, Paragraph 6 is the paragraph dealing  
9 with the writer's rights, the writer's reservation of  
10 publishing interest. And that's what this accounting  
11 is purporting to try and deal with, this so-called  
12 accounting.

13 THE WITNESS: Yeah.

14 MR. MONAGHAN: But without -- without telling  
15 the recipient what it is you're accounting for, how  
16 many units, and going down the list, this is  
17 meaningless information for the Plaintiff. So, to  
18 suggest she should have tried to complain about it  
19 previously, other than this lawsuit, which has been in  
20 place for years and years, is disingenuous.

21 MS. PHARES: Well, Your Honor, I mean, first  
22 of all, there are several statements here. First of  
23 all, the Paragraph of the Complaint that Mr. Monaghan  
24 is referring to is 5 of the demand or, rather, 5 under  
25 his first amended cause of action. It specifically

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1 says that they are requesting an accounting as to any  
2 and all monies received or to be received by Defendant  
3 Sunbow.

4 Now, this statement is -- these are  
5 statements produced by a music administrator for the  
6 copyright owners. It is sent to -- to Sunbow and  
7 produced to Ms. Bryant. These are not monies received  
8 by Sunbow. And, furthermore, and it was -- and --  
9 yes -- and this is an accounting under a claim for  
10 unjust enrichment, and there is no question that  
11 Sunbow has not received any monies. And, furthermore,  
12 -- well, that's a fact. We have not received any of  
13 these monies. If there is a claim, and, frankly, this  
14 is part of what I was going to say to you tomorrow,  
15 but if there's likely to be an accounting, there are  
16 likely to be other necessary parties, including a  
17 music administrator, and there are going to have to be  
18 -- and the -- and the parties for whom the  
19 administrator is acting, who will have to be part of  
20 this. And for -- and on top of it, as a factual  
21 matter, whereas neither Mr. Monaghan or Ms. Bryant is  
22 very expert on -- on royalty statements, and I can  
23 certainly say that neither am I, but I can certainly  
24 see that right across the top is our headings and  
25 they're separate because these come from different

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1 countries because the publisher is collecting also  
2 from foreign collecting agencies, it says record  
3 number and then it has a unit number. And it has the  
4 number of units that are involved. It has the period  
5 involved. It has the percent received. And then it  
6 has the specific amount and the shares and the amount  
7 due to this person.

8 Now, I suspect that there hasn't been  
9 sufficient time to study this in the last 48 hours,  
10 since everyone was getting ready for trial, but this  
11 is exactly like the statements that were produced in  
12 2004, and we have not heard any complaint specifically  
13 about them. But, furthermore, if there had been a  
14 complaint, then the action is to go to Sunbow and say  
15 we have a problem with this. And you put it in  
16 writing, and then you proceed to follow up on the  
17 collection of facts that would lead to a question of  
18 whether or not there's a dispute on the royalty  
19 statements. That's what the accounting would be.

20 This is -- this is just an effort to try and  
21 suggest that -- that something has not happened when  
22 we have no information about that. We don't even have  
23 the right parties to determine that. We are not --  
24 the parties in this room cannot decide whether or not  
25 these royalty statements are accurate. And this --



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1 this is a proceeding that has to take place pursuant  
2 to a condition proceeding, which is a demand, if Ms.  
3 Bryant believes that there's something the matter, and  
4 she writes down and she says, I think that I'm  
5 entitled to X, Y, and Z, and I don't see it here, or I  
6 don't believe that it is here. And then someone has  
7 an opportunity to show that. That hasn't happened.

8 THE COURT: All right. That's certainly your  
9 position.

10 All right. Do you have any other questions  
11 of this witness?

12 MR. MONAGHAN: Yes, I do, Your Honor.

13 THE COURT: All right.

14 MR. MONAGHAN: I'm assuming I'm proceeding on  
15 a Redirect which is following the Direct that occurred  
16 when we were up in New City or --

17 THE COURT: Plus I'm allowing you to go into  
18 other things that were brought up on Cross, that --

19 MR. MONAGHAN: Were not covered.

20 THE COURT: The oral agreements and things  
21 like that; even though I believe that's out of the  
22 case now.

23 Go ahead.

24 MR. MONAGHAN: The oral agreements.

25 BY MR. MONAGHAN:

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1 Q. Ms. Bryant, now this -- for the first part of my  
2 questioning I'm going to be dealing with BMI. And you  
3 were questioned by Ms. Saffer about how jingles are  
4 registered, songs are registered.

5 A. Yeah.

6 Q. And do you remember what you told Court, and, if you  
7 can, refresh our recollection, your understanding as  
8 to how your compositions were registered with BMI.

9 A. In the main, my compositions are registered by a  
10 publisher or the administrator for the publisher.

11 Q. Okay. And who is that?

12 A. The publisher was Sunbow, d/b/a Star Wild or Wild  
13 Star, one of d/b/a companies, publishing companies,  
14 and they had an administrator that they hired, Bill  
15 Dobishinski.

16 Q. Okay. They hired Bill Dobishinski?

17 A. Yes.

18 Q. He wasn't hired by you?

19 A. No.

20 Q. Okay. Now, that -- that Star Wild and Wild Star is,  
21 in fact, the music publishing company that's referred  
22 to in the Sunbow agreement, isn't it?

23 A. Right.

24 Q. Okay. And, so, you aren't complaining about the fact  
25 that Sunbow was allowing Wild Star or Star Wild to

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1 deal with the publishing on your behalf?

2 A. No.

3 Q. Okay. You understood that they were doing it for the  
4 mutual benefit of yourself and the publisher?

5 A. Yes, I do.

6 Q. Okay. And that was completely consistent with the  
7 agreement?

8 A. Yes.

9 Q. Okay. But whose responsibility was it to file  
10 accurate information with BMI as to the contributions,  
11 musical contributions to these compositions?

12 A. The publisher or the publisher's administrator, which  
13 would be Sunbow or Sunbow's publishing companies and  
14 their administrator, Bill Dobishinski.

15 Q. Right. And were those -- do you know what types of  
16 forms? Do they have a name that were used?

17 A. Yes. Clearance forms.

18 Q. When are clearance forms used?

19 A. They're the forms where you list the name, address,  
20 Social Security number, and affiliation, BMI or ASCAP,  
21 of the writers and their percentage of the songs, and  
22 they're filed by the producer, the publisher. In the  
23 beginning they were filed by Sunbow, Alyss Gouyet  
24 (sic) at Sunbow, and then, when they hired Bill  
25 Dobishinski, he put in -- in the clearance forms.

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1 Q. So, for example, Exhibit 3 in evidence, is that such a  
2 clearance form (handing).

3 A. Yes, this is the original filing for the transformers.

4 Q. And what's your percentage interest shown on that  
5 clearance form?

6 A. 50%.

7 Q. Okay. And what's the composition?

8 A. The transformers main theme. This is actually the TV  
9 show filing, yeah.

10 Q. Okay. And what percentage are you currently getting  
11 from any use of the transformers, performance use?

12 A. In the main, I'm getting 8.3%. I've seen a few 50%  
13 credits, and I don't know who decides which -- which  
14 way to pay me.

15 Q. Okay. But this form, that wasn't seen by you before  
16 it was filed, was it?

17 A. No.

18 MR. MONAGHAN: Okay.

19 A. Sunbow submitted it with their names on it.

20 Q. Okay. And, likewise, Plaintiff's Exhibit 4 in  
21 evidence, is that another clearance form that was used  
22 (handing)?

23 A. Oh, I remember this one. Yes, this is the  
24 transformers movie theme, which is also called the  
25 transformers rock and role theme.



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1 Q. And what percentage are you shown on that form as  
 2 owning in that?  
 3 A. 20%.  
 4 Q. And do you know how that form came to be filed?  
 5 A. No. It's -- it's filed for Scotty Brother Records,  
 6 CBS, Scotty Brothers label, Holy Moley Music.  
 7 Q. What do you have to do with any of those parties?  
 8 A. Nothing.  
 9 Q. Who filed that form?  
 10 A. It says -- I don't know who filed the form. Mark  
 11 Perez.  
 12 Can you read that? That's the authorized  
 13 signature.  
 14 Q. Okay. But it's your understanding that Sunbow or its  
 15 publishing arm would have been responsible for the  
 16 filing of the exhibit?  
 17 A. Yeah, or would have authorized it. I couldn't file  
 18 it.  
 19 Q. Okay. And is there another form that is used to  
 20 register compositions with BMI?  
 21 A. They have a cue sheet system.  
 22 Q. What's a cue sheet system? We've heard about it, but  
 23 let's get it on the record.  
 24 A. A cue sheet is a record of all the music that's used  
 25 in a television program, and it could have like 30

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1 seconds of violent music, and then a wedding march,  
 2 and then it could have the transformers theme, and  
 3 each composer would be listed in their affiliation and  
 4 the length of that piece of music. So, that's how  
 5 they submit for original music written for TV. ...  
 6  
 7 MS. SAFFER: Your Honor, I wish to raise an  
 8 objection. Clearly, the witness can testify as to her  
 9 understanding, but the witness hasn't been shown to be  
 10 an expert, nor is she an employee of BMI, nor is she  
 11 somebody, by her own admissions, who normally files  
 12 these documents, and I'd like the record to indicate  
 13 at least that it's her understanding of how this is  
 14 done, not that it is the way that it's done.  
 15 MR. MONAGHAN: That's all she testified to.  
 16 THE COURT: All right.  
 17 MR. MONAGHAN: That's her understanding.  
 18 That was the question. Okay.  
 19 Q. And what do you have to do with filing clearance  
 20 forms?  
 21 A. Well, only --  
 22 Q. I'm sorry. Wrong question. Cue sheets, cue sheets.  
 23 A. Well, I don't file cue sheets. The administrator  
 24 files them.  
 25 MR. MONAGHAN: Okay.

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1 A. The publisher files them.  
 2 Q. And have you come to learn in this case and has the  
 3 evidence shown that Sunbow or its employee, Bill  
 4 Dobishinski, caused forms to be filed with BMI?  
 5 A. Yes.  
 6 MR. MONAGHAN: Okay.  
 7 A. BMI gave them to us.  
 8 Q. Okay. Now, can you very quickly, just to refresh the  
 9 Court, as quickly as possible, Exhibit 5, can you tell  
 10 the Court what that was, Exhibit 5 in evidence  
 11 (handing)?  
 12 A. This is a BMI U.S. Feature Royalties Statement. At  
 13 top it says: BMI commercial jingles.  
 14 Q. What song?  
 15 A. It's a bunch of different songs.  
 16 MS. PHARES: Your Honor, I'm going to object.  
 17 Jingles relate to GBI. They're not in this case.  
 18 It's not relevant.  
 19 MR. MONAGHAN: We've gone around -- we've  
 20 show the Court, and it's already in evidence --  
 21 MS. PHARES: Yes, but we've come a long way  
 22 since the last two years when it went into evidence.  
 23 MR. MONAGHAN: But we haven't gotten by that  
 24 point because it's still the case that your client,  
 25 Sunbow, produced -- and this is in evidence --

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1 produced these transformers videos and Sunbow's name  
 2 is on it. It's in evidence. There's Sunbow --  
 3 MS. PHARES: Well, of course they're Sunbow.  
 4 Sunbow produced this thing in the 1980s. Their name  
 5 will always be on it.  
 6 MR. MONAGHAN: And the evidence will show,  
 7 when we get to the rest of the case, when we get  
 8 to -- when we get by the Plaintiff -- and I've never  
 9 heard of a case getting dismissed right on the  
 10 Plaintiff's case, right on the Plaintiff, when she's  
 11 the witness -- but the evidence will show through Ms.  
 12 Weitzman, and the Plaintiff has testified, the music  
 13 was just handed over. The music composed as jingles  
 14 was handed over to Sunbow. Sunbow used it; Sunbow has  
 15 to pay the royalties.  
 16 THE COURT: Well, hold on.  
 17 Didn't Sunbow have the right to do anything  
 18 they wanted with it?  
 19 MR. MONAGHAN: Sure.  
 20 THE COURT: So, you keep saying they handed  
 21 it over.  
 22 MR. MONAGHAN: We're not complaining about  
 23 it; but Ms. Phares doesn't want the transformers issue  
 24 to be in the case because she says that was done for  
 25 GBI. And what we're saying is Sunbow, GBI, Bacal, we

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1 don't care.

2 MS. PHARES: I beg your pardon. There is a  
3 transformers movie that was done for Sunbow. What I  
4 am saying is that we are not talking about cue sheets,  
5 whatever, that have to do with jingles. We're just --  
6 that's not here. That's not in this case.

7 MR. MONAGHAN: What we're talking about is  
8 the registrations with BMI.

9 I think what's important for the Court to  
10 know, and we've been discussing this a little bit  
11 today ...

12 Q. What effect does an incorrect registration at BMI have  
13 with respect to any use of the music? In other words,  
14 is it just -- does it only have an impact on  
15 performance royalties or does it effect any other  
16 uses?

17 A. It effects these statements right here.

18 MS. PHARES: Objection. Foundation.

19 THE COURT: Hold on.

20 MS. PHARES: Objection. Foundation.

21 THE COURT: Sustained, sustained.

22 A. It effects -- it effects all of my payments  
23 everywhere.

24 MR. MONAGHAN: The objection was sustained.

25 THE WITNESS: Oh, I forgot about that.

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1 MR. MONAGHAN: Okay. It's sustained.

2 Q. How -- well, we've got to address this issue. The  
3 question is: When an a cue sheet is filed -- well,  
4 I'll withdraw that question.

5 Have you come to learn that your music has  
6 been used in these various products that we've already  
7 introduced into evidence, these various DVDs, VHSs?

8 A. Yes, all of them used my -- you're talking about  
9 transformers there?

10 Q. Right.

11 A. All of them used my transformers theme, and many of  
12 them actually used a master recording from my jingle  
13 recording of that and listed it on to the DVDs and  
14 VHSs for the theme for that. The same publisher  
15 published for GBI and Sunbow. They just shuffled it  
16 over. That's okay.

17 Q. And do you know how it is that Sunbow was able to use  
18 your music, license your music to third parties,  
19 pursuant to what authority?

20 A. Well, it was a carry-over from -- that I can see. All  
21 I can figure is because they were the publisher all  
22 along for GBI, they could do --

23 MS. PHARES: Objection. The question is do  
24 you know. I think the answer to that is yes or no.

25 THE COURT: I agree. Sustained.

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1 MR. MONAGHAN: Okay.

2 THE COURT: But --

3 A. Yes or no.

4 THE COURT: Well, didn't Sunbow have the  
5 power to transfer your music to anyone they wanted?

6 THE WITNESS: As long as they gave me my  
7 royalties.

8 THE COURT: But were your royalties then  
9 coming from Sunbow or somebody else?

10 THE WITNESS: They didn't have my copyright  
11 until I agreed with them that I would get my royalties  
12 if I gave them the copyright. So, just because they  
13 have the copyright that doesn't excuse them paying me  
14 royalties in -- in music publishing and making sure my  
15 listings were proper for my performance royalties.

16 THE COURT: Hold on. You say that Sunbow was  
17 responsible for your listings?

18 THE WITNESS: Well, Sunbow registered these  
19 with BMI.

20 THE COURT: All right. Go ahead.

21 MR. MONAGHAN: Yeah. That's the case. You  
22 just heard of essence of it right there.

23 THE COURT: Okay.

24 Q. You've seen Exhibit 1. That's your BMI agreement of  
25 August '71; correct?

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1 A. Yeah, yes.

2 Q. Okay. Now ...

3 MS. PHARES: Of what period? '71?

4 MR. MONAGHAN: Yeah.

5 MS. PHARES: That -- that's -- even in your  
6 wildest dreams, that's earlier than any Statute of  
7 Limitations that could apply to this case.

8 THE WITNESS: It rolls over every two years.

9 MR. MONAGHAN: No, no; wait.

10 MS. PHARES: What are we talking about?

11 MR. MONAGHAN: Perhaps there's a slight  
12 misunderstanding.

13 MS. PHARES: Are we talking about a cue  
14 sheet? I don't know what we're talking about,  
15 frankly.

16 MR. MONAGHAN: All right. We're talking  
17 about the BMI agreement, the BMI agreement.

18 MS. PHARES: I beg your pardon.

19 MR. MONAGHAN: It's okay. And my  
20 recollection, the contract was six years from the  
21 breach, so the contract could be '71, but the breach  
22 could be 2005.

23 Q. Okay. This is your BMI agreement; right?

24 A. Yes.

25 Q. Okay. What was your understanding of the substance of

<p style="text-align: right;">Page 118</p> <p>1 this agreement? What did you understand BMI was going</p> <p>2 to do for you and what were you -- what were you</p> <p>3 giving BMI the rights to do?</p> <p>4 MS. SAFFER: Excuse me, excuse me, Your</p> <p>5 Honor.</p> <p>6 MR. MONAGHAN: I'm asking for her</p> <p>7 understanding.</p> <p>8 MS. SAFFER: Wait.</p> <p>9 THE COURT: Go ahead.</p> <p>10 MS. SAFFER: Mr. Monaghan presented his case</p> <p>11 back a couple years ago, to which I then Cross-</p> <p>12 examined Anne. Since that time, Mr. Monaghan has come</p> <p>13 up with a novel new theory that was not in his</p> <p>14 original Complaint and that, frankly, was not part of</p> <p>15 his Direct Testimony with Anne. There has been</p> <p>16 nothing on Cross to bring up this new subject matter,</p> <p>17 and I'm going to object that it's untimely for him to</p> <p>18 come up with a new theory to produce on Redirect that</p> <p>19 hasn't been part of the case until he came up with</p> <p>20 this theory this summer in dealing with Mr. Kinder.</p> <p>21 So, I will object to testimony relating to a</p> <p>22 subject that was not part of the original Direct case.</p> <p>23 THE COURT: All right. I'm going to allow</p> <p>24 that line of questioning within reason, and since we</p> <p>25 don't have a jury, I'll take it for whatever</p>	<p style="text-align: right;">Page 120</p> <p>1 listings, which impact these Sony listings and these</p> <p>2 percentages all across the board.</p> <p>3 Q. You have to tell the Court how that happens. Connect</p> <p>4 the dots.</p> <p>5 MS. SAFFER: Excuse me.</p> <p>6 THE COURT: Yes. Go ahead.</p> <p>7 MS. SAFFER: I'd like to object in that I</p> <p>8 don't believe that Ms. Bryant's understanding of what</p> <p>9 she thought the contract may mean is relevant. What's</p> <p>10 relevant is the contract itself, and the terms, I</p> <p>11 believe they speak for themselves, and I'll address it</p> <p>12 further on Cross.</p> <p>13 THE COURT: All right; okay.</p> <p>14 Q. Connect the dots, please; that is, connect your</p> <p>15 registration as a BMI writer.</p> <p>16 That's a performing rights society; correct?</p> <p>17 A. Performing rights, royalties.</p> <p>18 Q. And these are public performance broadcast royalties?</p> <p>19 A. Right.</p> <p>20 Q. And they're split into two hundred percent interest;</p> <p>21 correct?</p> <p>22 A. Yes, a hundred percent for the publisher and a hundred</p> <p>23 percent for the writer.</p> <p>24 MS. SAFFER: Again, excuse me, Your Honor.</p> <p>25 I'm sorry. I'm sorry to keep interrupting, but Ms.</p>
<p style="text-align: right;">Page 119</p> <p>1 evidentiary worth I want to put on it.</p> <p>2 MR. MONAGHAN: Thank you, Your Honor.</p> <p>3 Q. And, Ms. Bryant, same question: What was the effect</p> <p>4 of the BMI -- what did you understand BMI was going to</p> <p>5 do for you; why did you join BMI in the first place?</p> <p>6 A. I joined BMI -- I had met Mr. Stan Katron there, and I</p> <p>7 was trying to figure out whether I should affiliate</p> <p>8 with ASCAP or BMI. He was a wonderful man. He was</p> <p>9 the head of writer relations, and I felt very good</p> <p>10 about the fact that they would protect my catalogs, I</p> <p>11 would give them my entire catalog, they would look out</p> <p>12 for it, they would claim for me. They were wonderful.</p> <p>13 And I always had a great feeling about BMI.</p> <p>14 My contract says that I -- I vouch for</p> <p>15 everything that I list with them as original, which,</p> <p>16 you know, means that everybody does that, and that</p> <p>17 they have the right to exclude anything from licensing</p> <p>18 in the BMI catalog of works that infringes by, it says</p> <p>19 here very clearly, by --</p> <p>20 Q. What paragraph? Tell the Court what you mean.</p> <p>21 A. Paragraph 11 -- by -- has a title or music or lyrics</p> <p>22 similar to that of a previously existing composition</p> <p>23 and may lead to a claim of unfair competition. That</p> <p>24 says to me right there that they have oversight, and</p> <p>25 I've always considered them the gatekeeper of those</p>	<p style="text-align: right;">Page 121</p> <p>1 Bryant and Mr. Monaghan are attempting to explain how</p> <p>2 BMI works. BMI will put on a witness, one that</p> <p>3 actually Pat has asked for himself, who can explain</p> <p>4 how BMI operates, and that it's -- it's wasting time</p> <p>5 to have people who are familiar with but not experts</p> <p>6 in explaining that.</p> <p>7 THE COURT: The witness, I assume, is talking</p> <p>8 what about she believes to be the system.</p> <p>9 MR. MONAGHAN: That's correct.</p> <p>10 THE COURT: Go ahead.</p> <p>11 Q. How did it work?</p> <p>12 MS. SAFFER: No. How did you believe it</p> <p>13 worked, if you don't mind. I'm sorry.</p> <p>14 A. After 35 years, I've all along believed --</p> <p>15 THE COURT: All right, all right now.</p> <p>16 MR. MONAGHAN: You don't have to debate with</p> <p>17 Ms. Saffer.</p> <p>18 A. 35 years --</p> <p>19 Q. What was your understanding of how this process, this</p> <p>20 two hundred percent process, worked?</p> <p>21 A. That the publisher got a hundred percent -- the two</p> <p>22 hundred percent system, the publishers got a hundred</p> <p>23 percent of the listing and the writer or writers got</p> <p>24 the writer's share, which was another hundred percent</p> <p>25 system, which could be divided into several writers or</p>



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1 multiple publishers as listed in either a clearance  
2 form or on a cue sheet.

3 Q. Okay. Now, there came a time, did there not, when you  
4 found that there were some problems? You testified to  
5 this already, so I don't think it's ... There came a  
6 time when you discovered some problems with your  
7 catalog; is that right?

8 A. Yes.

9 Q. When was that?

10 A. Initially in 19 -- the end of 1997 was when I -- when  
11 I -- I saw some problems on the website, the brand new  
12 website.

13 Q. Okay. And Exhibit 2 in evidence, that is your  
14 catalog, isn't it, your BMI catalog?

15 A. Yes.

16 Q. And this is produced as of what date, however?

17 MS. SAFFER: Excuse me, Your Honor. You  
18 know, this is, I guess, what we learned in -- in  
19 grammar school, as the two bites at the same apple.

20 Ms. Bryant testified; we went through all of  
21 this. What Mr. Monaghan is doing is pulling out the  
22 same exhibits and eliciting the same testimony. In  
23 case he didn't get it the way he wanted originally,  
24 he's going to see if he can't fix it the second time  
25 around.

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1 We've gone through all of this ground the  
2 first couple of days of trial. Now, you have limited  
3 the amount of time that you're going to be spending on  
4 this case right now, and I don't think it's  
5 appropriate for them to redo what has already been  
6 done and then maybe not give us time to reach new  
7 material.

8 THE COURT: Let me just ask, Mr. Monaghan,  
9 where are we going with this?

10 MR. MONAGHAN: We don't have much more on  
11 this, but let me just say --

12 THE COURT: We did actually go through this.

13 MR. MONAGHAN: We've had a two-year hiatus in  
14 the case. The context for any questions I might ask  
15 has to be set forth on the record now or it won't make  
16 any sense.

17 THE COURT: Well, let's really speed this  
18 along.

19 MR. MONAGHAN: And I appreciated Your Honor  
20 saying you're going to give us wide latitude on this.

21 MS. SAFFER: Yeah.

22 THE COURT: I always regret things that I  
23 say.

24 Go ahead.

25 MR. MONAGHAN: All right.

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1 Q. So, what's the state of the catalog listings now as we  
2 sit here today?

3 A. Didn't you ask me another question?

4 MS. SAFFER: Objection.

5 A. I got this question in 2000. I didn't finish  
6 answering my question.

7 Q. What's the date on the print-out?

8 A. 3/16/2000.

9 Q. How did you get that catalog?

10 A. I didn't get any help from -- from BMI after two years  
11 of writing and trying to get some answers on my  
12 catalog, so I went to you, Patrick Monaghan, and said,  
13 something's up, and you got -- we began this action.  
14 And that's when I -- two years later is when I got a  
15 copy of my catalog.

16 Q. And there's even a letter to Mr. Charlie Feldman. Do  
17 you know who he is?

18 A. Oh, yeah.

19 MR. MONAGHAN: And that's in evidence.

20 THE COURT: Okay. I really don't see what  
21 difference it makes, Counselor, when this was  
22 received. I mean, historical information --

23 THE WITNESS: Well, it took me two years to  
24 get my own catalog.

25 THE COURT: Just a moment, just a moment.

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1 THE WITNESS: I'm sorry.

2 MR. MONAGHAN: Moving on.

3 THE WITNESS: I'm sorry, Your Honor.

4 MR. MONAGHAN: Exhibit 29.

5 Ms. Reporter, you don't have Exhibit 29 in  
6 evidence; is that correct?

7 THE COURT: I don't have it in evidence.  
8 It's not in evidence.

9 MS. PHARES: No, it was -- it was excluded.

10 THE COURT: Right.

11 MR. MONAGHAN: Right.

12 THE COURT: It was on the GI Joe royalty.

13 MR. MONAGHAN: Right.

14 MS. PHARES: And it has to do with jingles.

15 MR. MONAGHAN: I'm going to -- I don't know  
16 why it's not in evidence. I'm going to ask the  
17 witness to identify it. It should be in evidence.  
18 It's a statement addressed to Anne Bryant. If she  
19 received it, there's a sufficient foundation for  
20 getting it.

21 MS. PHARES: Your Honor, this was excluded on  
22 July 7, 2004. Are we going to just repeat the whole  
23 case over again?

24 MR. MONAGHAN: I don't think so.

25 THE COURT: Well, I don't remember why it was

<p style="text-align: right;">Page 126</p> <p>1 excluded.</p> <p>2 Is it to Ms. Bryant?</p> <p>3 MS. PHARES: Maybe we can find out for you.</p> <p>4 THE COURT: It's to Ms. Bryant.</p> <p>5 MR. MONAGHAN: It's to Ms. Bryant.</p> <p>6 MS. SAFFER: I believe -- I believe --</p> <p>7 THE COURT: Just a moment.</p> <p>8 Go ahead. Why do you think it was excluded?</p> <p>9 MS. SAFFER: I believe it was excluded</p> <p>10 because it dealt with jingles and that wasn't the</p> <p>11 basis for this lawsuit. It was not relevant.</p> <p>12 THE COURT: All right. There you go.</p> <p>13 MR. MONAGHAN: Well, jingles are the basis of</p> <p>14 the lawsuit. This is -- the jingles are mentioned</p> <p>15 right in the -- in the statement, and it's -- you can</p> <p>16 take it for whatever weight it has, but it was sent to</p> <p>17 you.</p> <p>18 THE COURT: No, this is like before, you</p> <p>19 know, when it's in evidence, it's in evidence. I'm</p> <p>20 not going to go back. And if you want to dig up the</p> <p>21 record from two years ago, I'll look at the record,</p> <p>22 but I'm not going to allow it in.</p> <p>23 Let's go ahead.</p> <p>24 MR. MONAGHAN: Okay.</p> <p>25 Q. So, just to summarize the claims against BMI, so that</p>	<p style="text-align: right;">Page 128</p> <p>1 THE COURT: 45 was --</p> <p>2 MS. PHARES: Was also excluded.</p> <p>3 THE COURT: Energies TV program, the bunny,</p> <p>4 yes, energizer TV program.</p> <p>5 THE WITNESS: No, it's not the bunny, Your</p> <p>6 Honor. It's a different --</p> <p>7 THE COURT: Are you correcting me?</p> <p>8 THE WITNESS: I'm just letting you know.</p> <p>9 THE COURT: People say energizer, I always</p> <p>10 imagine it's the bunny.</p> <p>11 THE WITNESS: Oh, no, that's a television</p> <p>12 show called Energi.</p> <p>13 MR. MONAGHAN: Do you have 29?</p> <p>14 MR. PHARES: I have 29.</p> <p>15 MR. MONAGHAN: What about 45?</p> <p>16 MS. PHARES: No, I don't have 45.</p> <p>17 MR. MONAGHAN: My records did not indicate</p> <p>18 whether you had --</p> <p>19 MS. PHARES: Well, our records indicate that</p> <p>20 it was excluded.</p> <p>21 Was this a download by any chance?</p> <p>22 THE WITNESS: No.</p> <p>23 MR. MONAGHAN: No.</p> <p>24 THE COURT: Well, if it was excluded, unless</p> <p>25 you can dig up the point where it was excluded and I</p>
<p style="text-align: right;">Page 127</p> <p>1 the Court has a clear idea why it is you're suing BMI,</p> <p>2 tell the Judge why you're here today suing BMI? What</p> <p>3 did they do wrong?</p> <p>4 A. Well, they failed to safeguard my catalog, and it</p> <p>5 appears that these cue sheets are back door to</p> <p>6 changing people's listings from 100% or 50% down to</p> <p>7 8%. And it was after two years of tooth-pulling</p> <p>8 efforts that we finally got -- I had to hire an</p> <p>9 attorney -- that I finally got my catalog so I could</p> <p>10 actually see all that was going on in my catalog, so</p> <p>11 that I could even begin to understand the extent of</p> <p>12 why my income had gone away and why there were changes</p> <p>13 that were in front of my face on the website that</p> <p>14 didn't make any sense to me. But for two years, they</p> <p>15 refused to help me, and then when I sued them, they</p> <p>16 joined with the other Defendants against me, and it's</p> <p>17 been nothing but controversy ever since and -- instead</p> <p>18 of straightening out the catalog. And then two years</p> <p>19 ago they said they wanted to straighten out the</p> <p>20 catalog, and here we are.</p> <p>21 THE COURT: All right. I think we are far</p> <p>22 beyond any question that was posed. Let's go ahead.</p> <p>23 MR. MONAGHAN: Okay.</p> <p>24 Q. Exhibit 45, it may have suffered the same fate as 29,</p> <p>25 I don't remember, but --</p>	<p style="text-align: right;">Page 129</p> <p>1 can take a look at it again, it's still out.</p> <p>2 MR. MONAGHAN: Okay. Well, I'm just going to</p> <p>3 make the offer of Exhibit 45, just let her identify it</p> <p>4 for the record here. If it's excluded on the same</p> <p>5 basis, fine.</p> <p>6 THE COURT: All right.</p> <p>7 Q. I show you now, just for the record, if you can</p> <p>8 identify Exhibit 45, Ms. Bryant?</p> <p>9 A. Okay. From the Internet Movie Data Base, this is a</p> <p>10 read-out on the television show currently airing</p> <p>11 called Transformers Energi. It's one of three</p> <p>12 television shows using my television theme for the</p> <p>13 last five years without any accounting to me.</p> <p>14 MS. PHARES: Your Honor, I think the reason</p> <p>15 that this was excluded is because Sunbow didn't make</p> <p>16 this program. It doesn't distribute it. It has</p> <p>17 nothing to do with it. It may very well be that the</p> <p>18 copyright owner, the ultimate copyright owner,</p> <p>19 licensed the work to another production company; has</p> <p>20 nothing to do with Sunbow. And I believe that's what</p> <p>21 we told you the last time, and it was excluded.</p> <p>22 THE COURT: Well, how does a person like Ms.</p> <p>23 Bryant, then --</p> <p>24 MS. PHARES: And, in fact, that is indeed</p> <p>25 what I said to you the last time.</p>

<p style="text-align: right;">Page 130</p> <p>1 THE COURT: How does she get redress for lost</p> <p>2 money under those circumstances?</p> <p>3 MS. PHARES: Well, there are -- there are</p> <p>4 only certain occasions in which she is entitled to</p> <p>5 money. She is not always entitled to money. That's</p> <p>6 her assumption, but that is not the case. It's sort</p> <p>7 of the example, if I may say so, Your Honor, of what</p> <p>8 Ms. Saffer described to you in chambers, of the man</p> <p>9 who created the resistor. He was -- transistor, I</p> <p>10 mean. He was paid certain monies, but he did not get</p> <p>11 money from every exercise of the transistor patent.</p> <p>12 And that's the same situation that applies here.</p> <p>13 THE COURT: Now, as I understand it, a</p> <p>14 work-for-hire person may or may not get any rights; is</p> <p>15 that true?</p> <p>16 THE WITNESS: If they're -- yes, if they</p> <p>17 don't provide that their contracts give back the</p> <p>18 royalties, which I always do.</p> <p>19 THE COURT: Okay. Go ahead.</p> <p>20 MR. MONAGHAN: Your Honor, that sets on a</p> <p>21 good subject matter to cover.</p> <p>22 Q. And the work-for-hire concept as it applied to these</p> <p>23 relationships, who is the hirer and who is the hiree?</p> <p>24 MS. SAFFER: Excuse me. These relations? We</p> <p>25 have talked about lots of --</p>	<p style="text-align: right;">Page 132</p> <p>1 35 years.</p> <p>2 MS. PHARES: But the Court asked something</p> <p>3 about --</p> <p>4 THE COURT: You know what the problem is,</p> <p>5 folks? It's 4:10 and people are getting testy.</p> <p>6 Now, let's all relax. Take a deep breath.</p> <p>7 And, Ms. Bryant, if you could quickly sum up what you</p> <p>8 were saying.</p> <p>9 THE WITNESS: It's not a work-for-hire until</p> <p>10 I sign a contract that's satisfactory to me that makes</p> <p>11 it a work-for-hire. And, at that point, Your Honor, I</p> <p>12 give them the copyright, and contemporaneously they</p> <p>13 license back my royalties. That's the way it was done</p> <p>14 my entire career.</p> <p>15 THE COURT: Okay. So, M is a work-for-hire</p> <p>16 agreement --</p> <p>17 THE WITNESS: Yes.</p> <p>18 THE COURT: -- where you got back only those</p> <p>19 rights that are absolutely set forth in that</p> <p>20 agreement?</p> <p>21 THE WITNESS: Yes.</p> <p>22 THE COURT: Nothing beyond that?</p> <p>23 THE WITNESS: And that's all of them, that I</p> <p>24 can tell. I don't know of any other rights I would</p> <p>25 ask for.</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. MONAGHAN: Sunbow.</p> <p>2 MS. SAFFER: Sunbow; okay.</p> <p>3 Q. The Jem agreement, what is it, Exhibit M?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Did you understand who was being hired in the Sunbow</p> <p>6 agreement? You have three --</p> <p>7 A. Because that last question was a little funny. I</p> <p>8 understand that -- you're kind of starting from the</p> <p>9 middle of the copyright story.</p> <p>10 I write a piece of music as an individual.</p> <p>11 At the point where someone wants to buy it, I have to</p> <p>12 sign a piece of paper that says this will be deemed a</p> <p>13 work for hire and I'll turn over the copyright to you.</p> <p>14 I could have had the song for ten years before I did</p> <p>15 that.</p> <p>16 Okay. Then, at that point that I sign it</p> <p>17 over, it presumes that I have --</p> <p>18 MS. PHARES: Objection, Your Honor. This</p> <p>19 is --</p> <p>20 A. -- I have gotten all of these rights.</p> <p>21 MS. PHARES: This is calling for a legal</p> <p>22 conclusion. And I might add that the answer is so</p> <p>23 wrong that we just shouldn't go here. This is just</p> <p>24 not an accurate description of the law.</p> <p>25 THE WITNESS: This is my way of working for</p>	<p style="text-align: right;">Page 133</p> <p>1 THE COURT: All right. Let's go ahead.</p> <p>2 MR. MONAGHAN: Your Honor, is this a good</p> <p>3 time -- if you give me five minutes, I probably don't</p> <p>4 have more than five minutes more.</p> <p>5 THE COURT: All right. Go ahead. We're</p> <p>6 going to quit at 4:30, so, take your time.</p> <p>7 MR. MONAGHAN: No, I was going to say, if</p> <p>8 you'd give us a five-minute break to look over</p> <p>9 everything, make sure I covered everything.</p> <p>10 THE COURT: All right. I'll give you five</p> <p>11 minutes. Go ahead.</p> <p>12</p> <p>13 (Whereupon a recess was taken at</p> <p>14 4:10 PM.)</p> <p>15</p> <p>16 (Trial resumes at approximately 4:20 PM.)</p> <p>17</p> <p>18 THE COURT: Ms. Bryant, come back on the</p> <p>19 stand.</p> <p>20</p> <p>21 (Whereupon the Plaintiff resumes the</p> <p>22 witness stand.)</p> <p>23</p> <p>24 MR. MONAGHAN: One last question.</p> <p>25 THE COURT: That's what they all say.</p>



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1 MR. MONAGHAN: I know they all say that.  
 2 THE COURT: All right.  
 3 REDIRECT EXAMINATION BY MR. MONAGHAN: (Cont'd)  
 4 Q. Ms. Bryant, can you look at Exhibit M, the Jem  
 5 agreement?  
 6 A. Jem agreement, yes.  
 7 Q. Okay?  
 8 A. Okay.  
 9 Q. And let me direct your attention to Page 7. Yeah.  
 10 You're looking at the same page that I've got  
 11 the blow up of?  
 12 A. Yes.  
 13 Q. Okay. Would you read that last sentence, please?  
 14 A. The whole page?  
 15 Q. The one -- no, the last sentence.  
 16 A. All royalty statements ...?  
 17 Q. All royalty statements ...  
 18 A. Okay. "All royalties statements and other accounts  
 19 rendered by Company shall be binding upon contractor  
 20 and not subject to any objection by contractor, unless  
 21 specific objection in writing stating the basis  
 22 thereof is given to Company by contractor by one year  
 23 from date rendered."  
 24 Didn't I just do that?  
 25 Q. Who's the contractor?

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1 A. Kinder and Bryant.  
 2 Q. Who's the writer?  
 3 A. Anne Bryant.  
 4 MS. PHARES: And Ford Kinder.  
 5 THE WITNESS: And/or Ford Kinder.  
 6 MS. PHARES: Your Honor, objection.  
 7 MR. MONAGHAN: That's all I have, Your Honor,  
 8 on Redirect.  
 9 THE COURT: All right.  
 10 MS. PHARES: Objection, Your Honor. The  
 11 document speaks to itself, and unless there be any  
 12 question, it quite clearly says that this is for the  
 13 services of Anne Bryant and Ford Kinder, jointly  
 14 referred to as Writer.  
 15 THE WITNESS: All right; yes, that's true.  
 16 I'm sorry.  
 17 THE COURT: All right.  
 18 Ms. Saffer, do you have a few questions?  
 19 MS. SAFFER: I do, Your Honor.  
 20 RECROSS-EXAMINATION BY MS. SAFFER:  
 21 Q. During the course of Redirect there were a number of  
 22 questions directed to the fact that there are multiple  
 23 registrations for a number of works that were written  
 24 by you and Mr. Kinder; correct?  
 25 A. Yes.

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1 Q. And I believe you testified that on some of these  
 2 registrations, you're credited with fifty percent,  
 3 some with a hundred, and some with as little as, I  
 4 think you said, eight-and-a-half percent; is that  
 5 correct?  
 6 A. Eight -- 8.3, yes.  
 7 Q. 8.3; okay. You also testified, I believe, that you  
 8 don't normally submit registrations or cue sheets, but  
 9 that they are submitted, you said, in this instance by  
 10 Sunbow or Sunbow's representative, Bill Dobishinski?  
 11 A. In a work-for-hire situation it's their responsibility  
 12 as publisher. I submit my own at times.  
 13 Q. Okay. During the first part of the trial, isn't it  
 14 true that there were documents produced that indicated  
 15 that Bill Dobishinski was also representing you and  
 16 Mr. Kinder?  
 17 A. He was the -- he was administrator for Sunbow, and he  
 18 also administrated for all of Sunbow's writers.  
 19 Q. Well, then, if he administered for Sunbow's writers,  
 20 he administered for you and Mr. Kinder; correct?  
 21 A. Well, he accounted to us, yes. He was the  
 22 administrator for Sunbow.  
 23 Q. No, I didn't say for Sunbow and neither did you.  
 24 There was correspondence that was produced which  
 25 showed that he represented the two of you.

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1 A. As an administrator, yes.  
 2 Q. Wasn't there also correspondence -- I mean testimony  
 3 that you gave in the beginning of the trial that said  
 4 that you and Mr. Kinder had an arrangement, that the  
 5 royalties were collected and you split them 50/50?  
 6 A. That's right.  
 7 Q. Okay. So that, in essence, it didn't matter to you  
 8 how they were registered, as long as you got what you  
 9 considered your fair share?  
 10 A. That's not fair to say, that I didn't care how they  
 11 were registered. I wanted them registered properly.  
 12 Q. Well, what was properly?  
 13 A. Well, properly, with the person who had the authority  
 14 to register them, with the responsibility of  
 15 registering them, registering the proper percentages.  
 16 Q. You indicated in your testimony that the proper person  
 17 to register it was the individual representing, in  
 18 this case Sunbow, or the production company. You  
 19 testified to that a number of times.  
 20 A. Okay.  
 21 Q. You also testified that the man who registered a great  
 22 many of these represented you.  
 23 A. Yes, but there were also registrations for -- for  
 24 example, that were given to me in this past afternoon  
 25 that were registered by other people who were not the

<p style="text-align: right;">Page 138</p> <p>1 -- Sunbow and were not the administrator for Sunbow 2 productions.</p> <p>3 Q. Did you have authority, when you were not the 4 copyright owner, to say what the copyright owner would 5 do with these works that no longer belonged to you by 6 your own admission?</p> <p>7 A. Wait a minute. Star Wild was my publisher. Somebody 8 else, out of left field, is registering my song. I 9 don't understand that.</p> <p>10 Q. How do you know it's somebody out of left field?</p> <p>11 A. Because none of these people have the names that 12 they're supposed to have to be registering my songs 13 for Star Wild and Sunbow. Holy Moley Music? Who's 14 that?</p> <p>15 Q. How do you know what Sunbow did with the music which 16 was owned by Sunbow?</p> <p>17 A. That's a very good question. I'm glad you brought 18 that up. How could I possibly know what they're 19 doing?</p> <p>20 Q. What right did you have, what right --</p> <p>21 A. I have that right. I have the music publishing rights 22 and I have the performance rights, and they just can't 23 go licensing it around and avoiding me getting my 24 payments for publishing -- music publishing money and 25 performance rights money. They just can't put on</p>	<p style="text-align: right;">Page 140</p> <p>1 THE COURT: Go ahead.</p> <p>2 Q. Can you read that to the Court, please?</p> <p>3 A. B. "Without in any way limiting the generality of the 4 foregoing, it is agreed that the Company shall have 5 the exclusive right and may license others to use, 6 adapt, arrange, change, add to, or subtract from the 7 music and to combine the same with other reproduced, 8 transmit, perform, broadcast, telecast, and/or 9 otherwise communicate the same or any version or 10 versions thereof by any means, including, but not 11 limited to, in synchronization with motion pictures, 12 television, and/or other form of recordation or 13 reproduction of sight and/or sound, whether now known 14 or hereafter devised, publicly, for profit, or 15 otherwise, it being understood the Contractor and 16 Writer hereby waive any so-called moral rights" -- 17 ha -- "which may now be or may hereafter be 18 recognized. It is understood and agreed that neither 19 Contractor, nor Writer shall have any right, title, or 20 interest in any other literary material and/or lyrics 21 which may be combined with the music." 22 My God, how do you guys write this stuff?</p> <p>23 Q. I will ask you, although you're not a writer --</p> <p>24 A. I am a writer.</p> <p>25 Q. I mean -- excuse me, excuse me. That was a slip. I</p>
<p style="text-align: right;">Page 139</p> <p>1 Armada and Energi and all of these TV shows and avoid 2 me. I have a contract.</p> <p>3 MS. PHARES: Objection, Your Honor.</p> <p>4 Foundation.</p> <p>5 THE COURT: No, I think that --</p> <p>6 MS. PHARES: Ms. Bryant is not -- not only 7 does she not know how it's being licensed, she doesn't 8 even know whether or not she's entitled to money when 9 it is licensed.</p> <p>10 THE COURT: I take her statement just as an 11 expression of her own frustration as she sees it.</p> <p>12 THE WITNESS: I'm supposed to get the 13 performance rights royalties, Mrs. Phares. Why are my 14 things being broadcast and I'm not getting them?</p> <p>15 THE COURT: All right. Now, there's no 16 question pending. Please don't answer anything.</p> <p>17 MS. SAFFER: Well, Your Honor, you'll have to 18 forgive me on this. Mr. Monaghan has only blown up 19 the pages of this contract that he thought was 20 relevant, which, okay; fair enough. I didn't know we 21 were going to be addressing this. So, do you have a 22 copy of the contract? It's Exhibit M.</p> <p>23 THE COURT: It's right here.</p> <p>24 MS. SAFFER: Okay.</p> <p>25 Q. Page 2, Paragraph 5B.</p>	<p style="text-align: right;">Page 141</p> <p>1 apologize -- that you're not a lawyer, does it not say 2 that they have the right to do with this as they see 3 fit?</p> <p>4 A. Yeah, but they have to give me the royalties.</p> <p>5 Q. No, they only have to give you the royalties as 6 spelled out there. This allows them to take this 7 music that they now own, license it, use it, give it 8 to anybody else, combine it with other music, adapt 9 it, arrange it, etcetera. That's what this contract 10 that you signed gives them the right to do.</p> <p>11 A. An arrangement is not a composition, Ms. Saffer. You 12 know that. Arrangers -- I'm an arranger. Arrangers 13 don't get royalties. Composers get royalties. I get 14 my royalties as a composer. This is a composition.</p> <p>15 Q. Doesn't this contract give them the right to make new 16 versions of the music, to take it, to change it in any 17 way they see fit as the owner of the music?</p> <p>18 A. Yes; but they haven't done that. They're using the 19 same song. That's not a change. An arrangement is 20 not a change. An arrangement's an arrangement. And 21 if that's the excuse, that doesn't hold.</p> <p>22 Q. Well, clearly you're entitled to believe what you wish 23 to believe.</p> <p>24 A. You pay royalties on arrangements?</p> <p>25 THE COURT: All right. Please, let's not</p>

<p style="text-align: right;">Page 142</p> <p>1 have any argument here.</p> <p>2 Do you have one more question? That's going</p> <p>3 to be it.</p> <p>4 MS. SAFFER: Yes, I have one more question.</p> <p>5 It may have to have a couple of parts.</p> <p>6 THE COURT: All right.</p> <p>7 MS. SAFFER: Forgive me.</p> <p>8 Q. Mr. Monaghan also referred you to the BMI contract</p> <p>9 that you signed as a writer; correct?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have it in front of you there?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Paragraph 4 talks about the rights that were</p> <p>14 granted to BMI by you.</p> <p>15 MS. SAFFER: Do you have it there, sir?</p> <p>16 THE COURT: No.</p> <p>17</p> <p>18 (Handing to Judge.)</p> <p>19</p> <p>20 Q. All right. Paragraph 4. Doesn't that paragraph</p> <p>21 indicate that what you have granted to BMI is the</p> <p>22 right to license the public performance of your</p> <p>23 rights -- you haven't granted to BMI anything else but</p> <p>24 the right to license the public performance of the</p> <p>25 music; correct?</p>	<p style="text-align: right;">Page 144</p> <p>1 your responsibility as -- as the person licensing.</p> <p>2 THE COURT: All right. We're going to stop</p> <p>3 for tonight. Tomorrow at 2:00 o'clock we will resume.</p> <p>4 The only thing left with Ms. Bryant is a</p> <p>5 Recross, should there be one, and whatever --</p> <p>6 MS. SAFFER: I haven't finished this, just</p> <p>7 this line of questioning.</p> <p>8 THE COURT: Well, that's it for today.</p> <p>9 MS. PHARES: Your Honor, my understanding was</p> <p>10 that you were going to hear arguments.</p> <p>11 THE COURT: Yes, yes, I'm going to hear</p> <p>12 arguments. I'm going to rule on any motions that I</p> <p>13 have to tomorrow, and we'll see where we go.</p> <p>14 MS. PHARES: And, Your Honor, if I may just</p> <p>15 pursue that? If -- well, maybe we'll wait until</p> <p>16 tomorrow.</p> <p>17 I was going to say: At the moment, all of</p> <p>18 the witnesses on our list, certainly, and on Mr.</p> <p>19 Monaghan's list were directed towards this oral</p> <p>20 agreement theory. And I don't know what's left.</p> <p>21 THE COURT: Well, I'll give you an example.</p> <p>22 Mr. Monaghan may want to put on some expert dealing</p> <p>23 with the right to have an accounting. I don't know.</p> <p>24 I'm not going to put myself in his shoes; but I don't</p> <p>25 know what's going to happen, except that, from my</p>
<p style="text-align: right;">Page 143</p> <p>1 A. Yes, that's -- that looks right.</p> <p>2 Q. Therefore, you haven't asked BMI to be your agent,</p> <p>3 your representative, whatever word you want to use,</p> <p>4 for any other rights you may have, just the right to</p> <p>5 license the public performance?</p> <p>6 A. (No verbal response.)</p> <p>7 Q. If that's the case, how can you expect BMI to be</p> <p>8 responsible to you if any other right you may have is</p> <p>9 violated? On what basis would BMI be obligated to do</p> <p>10 that on your behalf?</p> <p>11 A. You're asking me a good question. I like this</p> <p>12 question.</p> <p>13 If I have a song in my catalog, that I'm a</p> <p>14 BMI writer all these years, and it's a BMI catalog of</p> <p>15 works, right, and it takes -- it's used in situations</p> <p>16 where it must be licensed by you, but the people who</p> <p>17 are being paid are all ASCAP writers, now how does</p> <p>18 that happen, as in the case of Enerjon and Armada and</p> <p>19 these other TV shows, that a BMI title, the</p> <p>20 transformer's being paid to ASCAP writers, and BMI is</p> <p>21 not saying, hey, wait a minute; that's a BMI title?</p> <p>22 Explain to me. Why don't you claim that for</p> <p>23 me? How do you feel about ASCAP writers collecting on</p> <p>24 BMI songs?</p> <p>25 I don't understand. I think that's part of</p>	<p style="text-align: right;">Page 145</p> <p>1 standpoint, the written agreements are all as the Jern</p> <p>2 contract set forth, and the -- there are no oral</p> <p>3 agreements. The oral agreements got folded into them.</p> <p>4 And that the only question that I saw left was whether</p> <p>5 there was a cause of action that either directly or</p> <p>6 indirectly caused this Court to move now to say, okay,</p> <p>7 there has to be an accounting. And I'll listen to</p> <p>8 those arguments tomorrow.</p> <p>9 MS. PHARES: Thank you, Your Honor.</p> <p>10 THE COURT: All right.</p> <p>11 THE WITNESS: Can I take these statements</p> <p>12 home?</p> <p>13 THE COURT: No. You have to talk to your</p> <p>14 lawyer about it. He'll give you a copy of them.</p> <p>15 THE WITNESS: We didn't get this.</p> <p>16 MS. PHARES: Well, Your Honor, I don't know</p> <p>17 where these original Plaintiff's exhibits are in the</p> <p>18 room, but --</p> <p>19 MR. MONAGHAN: In that pile.</p> <p>20 THE COURT: Ms. Saffer, here's your copy.</p> <p>21 MS. SAFFER: That's of the contract?</p> <p>22 THE COURT: Yeah, that's of the contract.</p> <p>23 MS. SAFFER: You need it or want it or would</p> <p>24 you rather not?</p> <p>25 THE COURT: All right; I'll take it.</p>



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## INDEX TO EXHIBITS

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## CERTIFICATION

I, LAURIE HARDISTY, a Stenographic Reporter for  
the State of New York, do hereby certify that I  
recorded Stenographically the proceedings herein, at  
the time and place noted in the heading hereof, and  
that the foregoing is an accurate transcript of same,  
to the best of my knowledge and belief.

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LAURIE HARDISTY